

**DATE:** October 25, 2007

**TO:** CVRC Board Directors

**VIA:** David R. Garcia, Chief Executive Officer

**FROM:** Ann Hix, Acting Community Development Director *ABH*  
Eric Crockett, Redevelopment Manager *EC*

**SUBJECT:** Transfer of "Rados" Property

**SUMMARY**

<b>Action</b>	Recommend the Agency approve and execute the Implementation Agreement and necessary documents, and transfer of property at 798 F Street.					
<b>Project Summary</b>	<b>Location</b>	798 F Street				
	<b>Site</b>	3.02-acre Agency-owned property at Bay Boulevard and Lagoon Drive				
	<b>Project Area</b>	Bayfront				
	<b>Project Type</b>	Land Transfer of Agency Property to BF Goodrich				
	<b>Function</b>	<b>Project Elements</b>			<b>Rules &amp; Regulations</b>	
<b>CVRC Functions</b>	<b>Redevelopment</b>	Implementation Agreement		✓	Cal. Redev. Law	✓
	<b>Planning</b>	GPA		CUP	General Plan	
		Rezone		Variance	Zoning Code	
					UCSP	
	<b>Design Review</b>	DRC		UCDP	Design Manual	
					Landscape Manual	
					UCSP	
	<b>Environmental</b>	Exemption		Initial Study	CEQA Guidelines	
		ND/MND	✓	EIR		

5-1

## **BACKGROUND**

In 1999, in order to increase the economic development potential for the land south of H Street adjacent to the Marina in the Bayfront Redevelopment Project Area, the Chula Vista Redevelopment Agency entered into a series of agreements with the Port of San Diego and BF Goodrich to relocate and consolidate the campus of one of the City's largest employers. This triggered a \$47 million dollar private investment and provided for cleanup of soils and groundwater contamination, demolition of underutilized industrial buildings and improved traffic circulation.

On July 13, 1999, the City of Chula Vista ("City"), the Redevelopment Agency ("Agency"), the San Diego Unified Port District ("Port") and Rohr, Incorporated (DBA BF Goodrich Aerospace Aerostructures Group) entered into a Relocation Agreement. The purpose of the agreement was to coordinate a series of land transfers intended to facilitate the relocation and consolidation of Goodrich's operations to the north side of the proposed H Street extension in the Bayfront Redevelopment Project Area. The result of these transfers would be a reconfigured campus (the New Campus) generally bounded by Bay Boulevard to the east, F Street/Lagoon Drive to the north, a realigned Marina Parkway to the west and the proposed H Street extension to the south (See map, Attachment 1). The relocation and consolidation of Goodrich facilities frees up land south of the proposed H Street extension that will be essential to the redevelopment of the Bayfront in accordance with the proposed Bayfront Master Plan.

One of the properties to be transferred was the privately-owned Rados Property, located at the corner of Lagoon Drive and Bay Boulevard. The Agency acquired the property in 2003, with the intention of transferring ownership to BFG. Now the terms of the transfer have been met and the Agency is prepared to transfer ownership to BFG, completing the assemblage for the New Campus in accordance with the 1999 Relocation Agreement.

## **FISCAL IMPACT**

In 1999, the Relocation Agreement contemplated the Agency receiving \$3,000,000 as a lump sum settlement from the Port as compensation in full for:

- The Agency-owned parcels (\$1,271,952<sup>1</sup>)
- The privately-owned Rados Property (\$1,052,409<sup>2</sup>)
- Transfer Activities (\$675,639)

---

<sup>1</sup> Appraised value of Agency Parcels.

<sup>2</sup> Appraised value of Rados Property.

5-2

However, according to financial records, the Agency received \$2,919,991 from the Port in 1999, as follows:

- On October 22, 1999, the Port deposited \$972,400 (appraised amount for Rados Property – less \$80,000 for demolition costs) with the State Superior Court on behalf of the Agency, which had entered into condemnation proceedings for the Rados Property.
- On December 20, 1999, the Port deposited \$1,271,952 to escrow (appraised value of Agency Parcels).
- On December 30, 1999, the Port deposited an additional \$675,639 into escrow (transfer activity costs for Agency and Rados Property).

There is an outstanding amount of \$80,009, for which there is no accounting or explanation readily available. The Agency continues to pursue this remaining balance with the Port.

To date, the Agency has expended \$1,490,000 for the purchase of the Rados site (2003) and approximately \$156,000 for clearance and remediation of the site. Approval of the Implementation Agreement will authorize the transfer of ownership of the property to BFG, including payment for grading of the site in the amount of \$254,000. So, the cost to transfer is approximately \$1,900,000, not including the cost to prepare transfer documents and a title policy. No appropriation is needed to complete the transfer, as the funds have already been budgeted.

### **ENVIRONMENTAL DETERMINATION**

The Environmental Review Coordinator has reviewed the proposed project for compliance with the California Environmental Quality Act ("CEQA") and has determined that the proposed project was adequately covered in the previously adopted Mitigated Negative Declaration (MND) IS-99-21. Therefore, no further environmental review or documentation is necessary.

### **RECOMMENDATION**

Staff recommends that the CVRC approve the following:

Resolution of the Chula Vista Redevelopment Corporation Recommending the Redevelopment Agency Approve and Execute the Implementation Agreement and any Necessary Documents By and Between the Redevelopment Agency of the City of

Chula Vista and Rohr, Inc., operating as BFGoodrich Aerostructures Group, and the Transfer of Property at 798 F Street in Chula Vista to Goodrich, Inc.

## **DISCUSSION**

In 1999, the Port of San Diego and the City of Chula Vista initiated cooperative efforts to facilitate Bayfront redevelopment and stimulate economic development through the reconfiguration of land use and ownership patterns on the waterfront. Several agreements were executed that year that laid the groundwork for a major redevelopment effort that would relocate and consolidate the campus of one of the City's largest employers, triggering substantial private investment and creation of an opportunity for new development. Below is a chronological summary of the events and agreements leading up to the current proposed Implementation Agreement.

### **Relocation Agreement**

To accomplish the consolidation of Goodrich's operations, the 1999 Relocation Agreement provided that Goodrich would transfer ownership of its land south of H Street (37.58 acres) to the Port, and that Goodrich would vacate the land it leased from the Port south of H Street. In return, the Port agreed to transfer various properties north of H Street, totaling 26.51 acres to Goodrich. These parcels were comprised of Port-owned property (16.66 acres), SDG&E property (7.41 acres) and its best efforts to acquire and transfer the MTDB property (2.44 acres). Additionally, the Port agreed to pay the Redevelopment Agency three million dollars for the Agency's Bay Boulevard properties, the privately-owned Rados Property (to be acquired by the Agency) and certain acquisition and transfer costs associated with the two sites.<sup>3</sup> Prior to holding a public hearing for the purposes of evaluating the merits of entering into an agreement which includes the sale, lease, or transfer of Agency property, the Redevelopment Agency is procedurally required by state redevelopment law (Health & Safety Code §33433) to prepare a "Summary Report" that summarizes the cost of the transaction to the Agency.

---

<sup>3</sup> Section 3.6.1 of the Relocation Agreement describes the uses of the Port's three million dollar contribution toward the financial obligations of the City and/or Agency (collectively, the "Transfer Activities"): (i) acquisition of the Rados Property, (ii) transfer of the Agency and Rados Property to BFG, (iii) delivery of title policies and endorsements for the Agency and Rados Property as reasonably requested by BFG under the Agency-BFG Transfer Agreement, (iv) preparation of Phase I and Phase II environmental reports for the Agency and Rados Property, and (v) clearing and grading of the Agency and Rados Property and Environmental Costs related to Environmental Remediation Activities on the Agency and Rados Property required pursuant to Sections 3.2.1(b), 3.2.2(b) and 7.4.2 hereof.

### **33433 Report**

Pursuant to Health and Safety Code Section 33433, the Agency prepared a "Summary Report of Agency Property Disposition and Financial Assistance." The hearing required by Health and Safety Code Section 33431 and 33433 was duly called, noticed and held (June 1999) in the manner required by law, and all conditions precedent required by law to be performed were duly performed. The Section 33433 Report was prepared, and filed in the Office of the City Clerk and in the Office of the Executive Director, and made available for public inspection and copying, all in the manner required by law.

### **Transfer Agreement**

On November 16, 1999, the Agency and BFGoodrich Aerospace Aerostructures Group, entered into a second agreement, entitled the Agency-BFG Transfer Agreement ("Transfer Agreement"). The purpose of this agreement was to implement the elements of the Relocation Agreement that dealt directly with the Agency and Goodrich – specifically, the transfer of the Agency Property<sup>4</sup> and the acquisition and transfer of the Rados Property<sup>5</sup> to Goodrich.

### **Development Agreement**

On December 30, 1999, the City, the Redevelopment Agency and Goodrich entered into a Development Agreement. The Agreement helped eliminate the uncertainty in planning for BFG, allowing them the opportunity to master plan the property per the existing rules, regulations, and policies of the City and Agency. It also provided the City with some assurances that BFG would undergo a master planning process for site development, and would cooperate with other development proposals on adjacent Bayfront properties.

### **Implementation Agreement**

The Agency conveyed the Bay Boulevard properties to Goodrich in December 1999 and subsequently acquired the Rados property in March of 2003. The conditions required by the Transfer Agreement have been met, except for the grading of the lot. Pursuant to Section 3.2.2.b of the Relocation Agreement, it was agreed that in lieu of the actual grading, the Agency would pay Goodrich the estimated cost of needed work. The cost to grade is estimated at \$254,000, and the proposed Implementation Agreement provides for payment of that amount to Goodrich.

---

<sup>4</sup> An approximately 3.65-acre Agency-owned property located on Bay Boulevard south of Lagoon Drive

<sup>5</sup> An approximately 3.02-acre property owned by Rados Brothers and located at the corner of Bay Boulevard and Lagoon Drive

### **Easement**

Both the Relocation Agreement and the Transfer Agreement include a requirement for an easement agreement between the City/Agency and BFG at the time of transfer of the Rados property, giving the City/Agency easement rights to build and maintain an "Entry Statement" on a small portion of land at the corner of Lagoon and Bay Boulevard – a gateway to the Bayfront. That easement is being delivered via a grant deed, a copy of which is included as Attachment 3.

### **DECISION-MAKER CONFLICTS**

Staff has reviewed the property holdings of the CVRC Members and has found no property holdings within 500 feet of the boundaries of the property which is the subject of this action.

### **ATTACHMENTS**

Attachment 1 – Locator Map

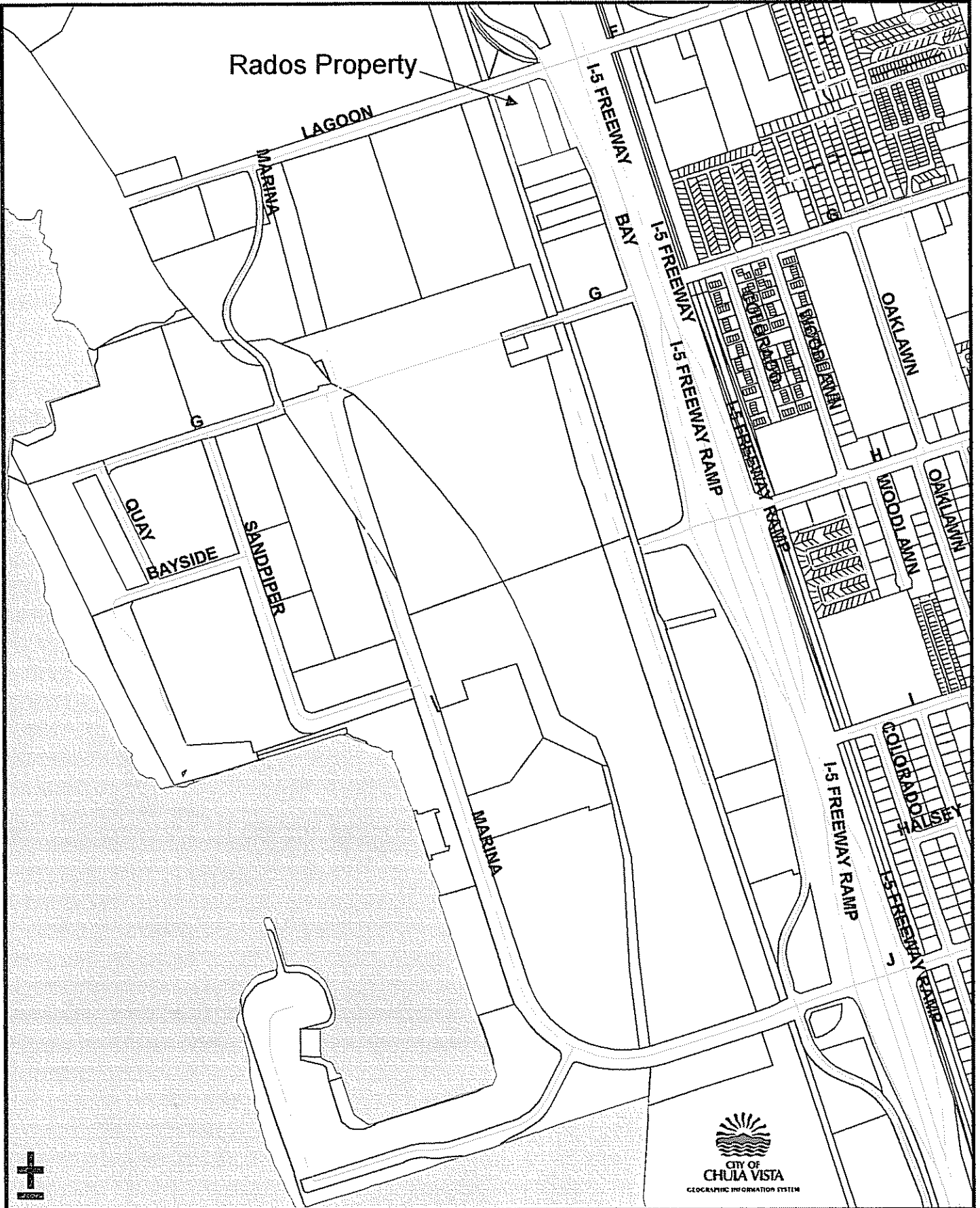
Attachment 2 – Implementation Agreement for the Agency-BFG Land Transfer Agreement

Attachment 3 – Grant Deed to City - Easement for Landscaping and Other Public Purposes

**PREPARED BY:** Janice Kluth – Senior Community Development Specialist

# Rados Property Transfer

Attachment 1



5-7

## IMPLEMENTATION OF THE AGENCY-BFG LAND TRANSFER AGREEMENT

This Implementation of the Agency-BFG Land Transfer Agreement [Implementation Agreement] is made by and between the REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA [Agency] and ROHR, INC., previously operating as BFGOODRICH AEROSPACE AEROSTRUCTURES GROUP and currently operating as Goodrich Aerostructures Group, a Delaware corporation and wholly owned subsidiary of Goodrich Corporation, previously the BFGoodrich Company [Goodrich], collectively, the Parties.

### RECITALS

A. The Agency, Goodrich, the City of Chula Vista [City] and the San Diego Unified Port District [Port] entered into the Relocation Agreement [Relocation Agreement] on July 13, 1999. The Relocation Agreement was amended in November 1999. The Relocation Agreement and the Amendment to Relocation Agreement are attached to this Implementation Agreement as Exhibit A.

B. To implement the Relocation Agreement, the Agency and Goodrich entered into the Agency-BFG Land Transfer Agreement [Transfer Agreement] on November 16, 1999. The Transfer Agreement is attached to this Implementation Agreement as Exhibit B.

C. The Parties now desire to implement the provisions of the Transfer Agreement concerning the Rados Property with this Implementation Agreement.

### AGREEMENT

**Section 1. Definitions.** The Parties agree that all terms used in this Implementation Agreement, unless defined herein if defined in the Relocation Agreement or the Transfer Agreement, shall have the meaning set forth in the Relocation Agreement or the Transfer Agreement.

**Section 2. Effective Date.** This Agreement shall be effective on the date which is the later of the two dates on which this Agreement is signed by the Agency and Goodrich [Effective Date].

**Section 3. Property Description.** The Agency agrees to convey to Goodrich a fee simple interest in the property known as the Rados Property, described as the 3.02-acre property located at the corner of Bay Boulevard and Lagoon Drive, and more fully described in the legal description and plat, attached to this Agreement as Exhibits C and D, respectively [the Rados Property].

5-8



**Section 4. City Easement at Northeast Corner of Rados Parcel.** Prior to the conveyance of the Rados Property to Goodrich, the Agency shall grant to the City an easement over that area described in Exhibit E and shown on a Plat designated as Exhibit F pursuant to Section 6.2.1 of the Relocation Agreement.

**Section 5. Chain Link Fence and Gate.** Goodrich agrees to purchase from the Agency the six-foot high chain link fence surrounding the Rados Property for \$ 3,500, which sum shall be deposited into Escrow.

**Section 6. Environmental Condition of the Rados Property.** The County of San Diego Department of Environmental Health issued a "No Further Action" Letter on February 16, 2006 stating that the cleanup goals established for the Rados Property have been met. Therefore, the Parties agree that the Agency's obligations under Section 4.4(a) of the Transfer Agreement and Section 7.4.2 of the Relocation Agreement are terminated for the Rados Property.

**Section 7. Physical Condition of the Rados Property.** The Parties agree that the Rados Property has been cleared and that the slab has been demolished. The Agency shall pay to Goodrich a sum of \$254,000, which shall be used for the grading of the Rados Property and the Agency Land as defined in Section 3.1 of the Transfer Agreement. Upon payment of this sum by the Agency, the Parties agree that the Agency's obligations in Section 4.4(b) of the Transfer Agreement have been satisfied.

**Section 8. Representations and Warranties of the Agency.** The Agency conveys the Rados Property in an 'AS IS' condition, with all faults, and except as stated herein, the Agency makes no representations or warranties to Goodrich with respect to any aspect of the Rados Property, including, without limitation, value, fitness for a particular use or purpose, physical condition, environmental state, the status of title, availability of access, ingress, egress, water or utilities, or any other matters. The Agency represents that

a) There is no pending litigation adversely affecting the Rados Property or the Agency's ability to convey the Rados Property;

b) There are no contractual commitments which have been made to any governmental authorities, utility companies, school districts or other governmental agencies which would impose an obligation on the Agency or its successors or assigns to make any contributions or dedications of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Rados Property; and

c) Except for the Relocation Agreement and the Transfer Agreement, and except for matters of record affecting title to the Rados Property, there are no leases or other agreements affecting title or possessory rights to the Rados Property. These representations are based upon the actual knowledge of the Agency personnel and the Agency has not performed any investigation or inquiry regarding these matters. The Agency shall indemnify, defend and hold Goodrich harmless from and against any claims,

5-9

demands, causes of action, liabilities, losses, costs and expenses, including without limitation, attorneys' and experts' fees and costs relating to or arising out of any breach or untruth of these representations and warranties. This indemnity shall survive the Closing, and the delivery of the grant deed for, and the conveyance of, the Rados Property.

**Section 9. Condition of Title.** The Agency shall convey to Goodrich, by grant deed, a fee simple interest in the Rados Property free and clear of all liens and monetary encumbrances, with the exception of the lien on non-delinquent real estate taxes and assessments not yet due and payable and all other liens and encumbrances of record and subject to the exceptions to title listed in the title report by First American Title, excluding those exceptions to title that are reasonably disapproved by Goodrich. Within 14 days of receipt of the title report, Goodrich shall provide written notice of disapproved exceptions. The condition of title shall be evidenced by a policy of title insurance in an amount reasonably requested by Goodrich showing title vested in Goodrich [the Rados Property Title Policy]. The Parties waive the requirement in Section 4.6 of the Transfer Agreement for an ALTA policy of title insurance.

**Section 10. Conditions Precedent to Conveyance of the Rados Property.**

A) Goodrich has fully performed and complied in all material respects with its obligations, covenants and agreements with regard to the Rados Property under this Implementation Agreement, the Transfer Agreement, and the Relocation Agreement, and is not in default under any provisions of any of these Agreements.

B) The Agency has fully performed and complied in all material respect with its obligations, covenants and agreements with regard to the Rados Property under this Implementation Agreement, the Transfer Agreement, and the Relocation Agreement, and all representations and warranties made by the Agency in this Implementation Agreement shall be materially true and correct as of the Closing Date.

C) First American Title is ready, willing, and able to issue the Rados Property Title Policy.

**Section 11. Closing.** The Closing shall be deemed to have occurred when an executed and acknowledged grant deed conveying the Rados Property to Goodrich is recorded in the official records of San Diego County.

A) Within one day prior to the Closing Date, the Agency shall deliver into escrow the executed and acknowledged grant deed in favor of Goodrich conveying the Rados Property to Goodrich.

B) Within one day prior to the Closing Date, the Agency shall deliver into escrow \$254,000 for the grading of the Rados Property and the Agency Land as described in Section 7 of this Implementation Agreement.

5-10

C) Within one day prior to the Closing Date, Goodrich shall deliver into escrow \$3,500 for the chain link fence as described in Section 5 of this Implementation Agreement.

D) Upon Closing, the Agency shall deliver possession of the Rados Property free and clear of all tenancies and parties in possession.

E) Each Party shall deposit in a timely manner all documents and written escrow instructions in escrow with the First American Title as may be necessary for conveyance of the Rados Property in accordance with this Implementation Agreement, or as may be reasonable requested by either Party.

F) Transfer taxes shall be paid by Goodrich. The cost of the Rados Property Title Policy shall be paid by Goodrich. Escrow fees and all other closing costs shall be shared equally between the Parties. Real estate taxes shall be prorated as of the Closing Date based on the best available estimate of real estate taxes for the period during which the Closing occurs, subject to final adjustment after Closing if requested by either Party in writing within one year following the Closing Date. Any adjustment shall be based on the actual tax statements received for such period. Each Party shall be responsible for the costs of its own consultants and legal counsel.

**Section 12. Non-discrimination Covenants.** The grant deed shall contain the following language: "The Agency covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall Goodrich or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

**Section 13. Notices.** All notices, demands and correspondence required or provided for under this Implementation Agreement shall be in writing and delivered in person, sent by certified mail, postage prepaid, or sent by a nationally recognized overnight courier that provides documentation of delivery.

Notice to the Agency shall be addressed as follows:

Redevelopment Agency of the City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910  
Attention: Eric Crockett

5-11

Notices to Goodrich shall be addressed as follows:

Goodrich Aerostructures Group  
850 Lagoon Drive  
Chula Vista, CA 91910  
Attention: Gary Sullivan

A Party may change its address by giving notice in writing to the other Parties in the manner provided above. Thereafter, notices, demands and other correspondence pertinent to this Implementation Agreement shall be addressed and transmitted to the new address.

**Section 14. Entire Agreement, Waivers, Amendments.** This Implementation Agreement and the Escrow Instructions constitute the entire understanding and agreement of the Parties with respect to the transfer of the Rados Property. In the event there is a conflict between the provisions of this Implementation Agreement and the Relocation Agreement and/or the Transfer Agreement, the Relocation Agreement and/or the Transfer Agreement shall control. All waivers of the provisions of this Implementation Agreement must be in writing and signed by an authorized representative of the Party sought to be charged with the waiver. The waiver by any Party of any term, covenant, agreement or condition contained in this Implementation Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition, nor shall any custom or practice which may have grown up between the Parties in the administration of this Implementation Agreement, the Relocation Agreement, or the Transfer Agreement be construed to waive or lessen the right of any Party to insist upon performance in strict accordance with all of the provisions of this Implementation Agreement. The terms and provisions of this Implementation Agreement shall only be amended or changed pursuant to a written instrument signed by both the Agency and Goodrich.

**Section 15. Time of the Essence.** Time is of the essence of each and every obligation of the Parties under this Implementation Agreement.

**Section 16. Applicable Law.** This Implementation Agreement shall be construed and enforced in accordance with the laws of the State of California.

**Section 17. Exhibits.** The following exhibits are attached to this Implementation Agreement:

Exhibit A – Relocation Agreement and Amendment to Relocation Agreement  
Exhibit B – Transfer Agreement  
Exhibit C – Grant Deed  
Exhibit D – Easement Grant Deed

5-12

**Section 18. Redevelopment Agency Approval Required.** Goodrich understands and agrees that this Implementation Agreement must be reviewed and considered at a hearing before the Redevelopment Agency. The Redevelopment Agency has the discretion to approve or disapprove any sections of this Implementation Agreement.

This Agreement is executed by the Agency and by Goodrich, acting by and through its lawfully authorized officer.

REDEVELOPMENT AGENCY OF THE CITY OF  
CHULA VISTA

Date: \_\_\_\_\_

By \_\_\_\_\_  
David Garcia  
Executive Director

ROHR, INC., operating as GOODRICH  
AEROSTRUCTURES GROUP, a Delaware  
corporation and wholly owned subsidiary of  
GOODRICH Corporation

Date: OCT. 17, 2007

By Guy B. Peter  
VP and GM OPERATIONS

Approved as to Form:

\_\_\_\_\_  
Ann Moore, Agency Counsel

5-13

RELOCATION AGREEMENT

by and among

CITY OF CHULA VISTA

REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA

SAN DIEGO UNIFIED PORT DISTRICT

and

ROHR, INC.,

operating as BFGOODRICH AEROSPACE AEROSTRUCTURES GROUP

5-19

2/20/12

RF 5/1 1/1/12

## TABLE OF CONTENTS

Section 1. RECITALS.....	1
1.1 Existing BFG Campus. ....	1
1.2 Redevelopment and Eminent Domain. ....	1
1.3 Purpose of Agreement and Related Agreements.....	1
1.4 Reservation of Discretion.....	2
Section 2. DEFINITIONS.....	2
Section 3. LAND TRANSFER AGREEMENTS.....	10
3.1 Land Transfer Agreement Between Port and BFG. ....	10
3.1.1 South Campus Transfers.....	11
3.1.2 Port Parcels. ....	11
3.1.3 SDG&E Property. ....	11
3.1.4 MTDB Property. ....	12
3.1.5 Approval of Land Transfer by State Lands Commission. ....	13
3.1.6 Title Exceptions. ....	13
3.2 Land Transfer Agreement Between Agency and BFG. ....	13
3.2.1 Agency Parcel. ....	13
3.2.2 Rados Parcel. ....	13
3.3 Transfer and Acceptance of Property.....	14
3.3.1 Property Transferred to Port. ....	14
3.3.2 Property Transferred to BFG. ....	15
3.4 Indemnities After Closing Date.....	17
3.4.1 Port Indemnity. ....	17
3.4.2 BFG Indemnity. ....	17
3.5 Environmental Matters. ....	17
3.6 Port-Agency Agreement. ....	18
3.6.1 Appropriation. ....	18
3.6.2 Funding.....	18
3.6.3 Utilization of Funds.....	19
3.6.4 Repayment Obligation.....	19
3.7 Other Pre Closing Obligations and Actions.....	19
3.7.1 BFG Subleases.....	19
3.7.2 BFG Ground Lease with SDG&E.....	20
3.7.3 BFG Lease With MTDB.....	20
3.7.4 Vacation of Marina Parkway.....	20
3.7.5 Lot Line Adjustments.....	20
3.7.6 Certificates of Compliance.....	20
3.8 Other Provisions.....	21
3.9 Form of Deeds.....	21
Section 4. BFG RELOCATION.....	21
4.1 Relocation Period.....	21

5-15

# **TABLE OF CONTENTS** (continued)

4.2 H Street Extension.....	22
4.3 Marina Parkway Realignment.....	22
4.4 Relocation Schedule.....	23
4.4.1 Adjustments to Relocation Schedule.....	23
4.5 BFG Occupancy of South Campus During Relocation Period.....	24
4.6 Termination of Obligations Concerning the South Campus.....	24
4.7 Utilities and Services.....	24
 Section 5. RELOCATION AND NEW CAMPUS FINANCE ASSISTANCE.....	24
5.1 Payments.....	24
5.2 Post-Closing Adjustments.....	24
5.3 Reimbursement of South Campus Property Taxes.....	25
5.4 New Campus Industrial Financing Assistance.....	25
5.4.1 Annual Installments.....	25
5.4.2 Relocation Period Payments.....	25
5.4.3 Post-Relocation Period Payments.....	25
5.4.4 Port Contribution.....	26
5.4.5 Port Loan Repayment.....	26
5.4.6 Payments to BFG Starting in Fiscal Year 2010/2011 Limited to Actual Receipts.....	27
5.4.7 Adjustments and Maximum Payment.....	27
5.4.8 In General.....	28
5.4.9 Special Indemnity.....	28
 Section 6. NEW CAMPUS AND SOUTH CAMPUS DEVELOPMENT.....	28
6.1 Development Agreement.....	28
6.1.1 Permitted Uses.....	28
6.1.2 Subsequent Approvals.....	29
6.1.3 Application of Subsequently Enacted Rules, Regulations and Official Policies.....	29
6.1.4 Other Governmental Permits, Approvals and Services.....	29
6.1.5 Adjacent Land Uses.....	30
6.1.6 Infrastructure, Fees and Exactions.....	30
6.1.7 Prior City Commitments.....	30
6.1.8 Term.....	30
6.2 BFG Obligations.....	30
6.2.1 Rados/Agency Parcels Use and Development.....	30
6.2.2 No Challenges; Cooperation.....	32
6.2.3 New Campus Master Plan.....	32
6.3 Port Cooperation.....	32
6.3.1 Port Jurisdiction and Control Over Land Uses.....	32
6.3.2 No Challenges.....	32
6.4 Port and City/Agency Agreements Regarding South Campus Development....	33
6.4.1 Master Plan Amendment.....	33

5-16



## TABLE OF CONTENTS (continued)

6.4.2 Master Plan Amendment.....	33
6.4.3 RFP Process and Project Approval.....	33
6.5 Covered Areas.....	33
 Section 7. ENVIRONMENTAL MANAGEMENT.....	 34
7.1 General Principles.....	34
7.1.1 Cooperation.....	34
7.1.2 Development Objectives.....	34
7.1.3 Risk-Based Standards.....	34
7.1.4 Environmental Objectives.....	35
7.1.5 Shared Costs.....	35
7.1.6 Manifests.....	35
7.1.7 Management.....	35
7.1.8 No Waiver.....	35
7.2 Allocation of Environmental Costs: South Campus.....	35
7.2.1 General.....	35
7.2.2 Allocation.....	36
7.2.3 Costs After Transfer.....	36
7.2.4 Costs Associated With Importation of Dredged Material.....	37
7.2.5 Costs Associated With Dredging.....	37
7.2.6 Costs Associated With Irrigation and Ponds.....	37
7.2.7 Costs Associated With Grading.....	37
7.2.8 Costs in Excess of Industrial Use Standards.....	38
7.2.9 Costs Associated With Underground Storage Tanks Costs.....	38
7.2.10 Costs Associated With Demolition.....	38
7.2.11 Costs Associated with Groundwater Monitoring.....	38
7.2.12 Costs Associated With Construction Dewatering.....	39
7.2.13 Cost Limitation.....	39
7.2.14 Contamination Discovery Cutoff.....	39
7.3 Management of Environmental Matters: South Campus.....	39
7.3.1 Management Responsibilities and Activities.....	39
7.4 Allocation of Environmental Costs and Management Responsibilities for Other Identified Properties.....	 46
7.4.1 Port Parcels and SDG&E Land North of H Street.....	46
7.4.2 Rados Parcel and City Parcel.....	49
7.4.3 Costs Associated With Dredged Material.....	50
7.4.4 Costs Associated With Dredging.....	50
7.4.5 Contamination Discovery Cutoff.....	50
7.5 Other Terms and Conditions.....	50
7.5.1 Cooperation.....	50
7.5.2 Permitting.....	52
7.5.3 Plans.....	52
7.5.4 Industrial Use Standard.....	53
7.6 Indemnity and Other Provisions.....	53
7.6.1 General.....	53

5-17

**TABLE OF CONTENTS**  
**(continued)**

7.6.2 Internal Costs .....	53
7.6.3 Consequential Damages .....	53
7.6.4 Penalties and Fines .....	53
7.6.5 Other Funds .....	54
Section 8. CLOSING .....	54
8.1 Closing; Closing Date .....	54
Section 9. GENERAL PROVISIONS .....	54
9.1 Claims and Fees .....	54
9.1.1 Indemnity Obligations .....	54
9.1.2 Notice of Third Party Claims .....	55
9.2 Force Majeure .....	55
9.2.1 Notice .....	55
9.2.2 Efforts to Minimize .....	55
9.2.3 Option to Terminate .....	55
9.3 Time of the Essence .....	56
9.4 Independent Contractors .....	56
9.5 Dispute Resolution .....	56
9.5.1 Mediation .....	56
9.5.2 Institution of Legal Action .....	56
9.5.3 Arbitration of Specified Disputes .....	56
9.6 No Joint Venture .....	57
9.7 Applicable Law .....	57
9.8 Notices .....	57
9.9 Rules of Construction .....	58
9.10 Severability .....	59
9.11 Entire Agreement, Waivers, Amendments .....	59
9.12 Further Action .....	59
9.13 Exhibits .....	59
9.14 Parties to Bear Their Own Costs .....	59
9.15 Captions .....	60
9.16 Assumption of Responsibility .....	60
9.17 Successors and Assigns .....	60
9.18 Third Parties .....	60

5-18

## RELOCATION AGREEMENT

THIS RELOCATION AGREEMENT (hereinafter referred to as "**Agreement**") is made and entered into effective this 13<sup>th</sup> day of July, 1999 ("**Effective Date**"), by and among the CITY OF CHULA VISTA, a municipal corporation ("**City**"), REDEVELOPMENT AGENCY OF THE CITY OF CHULA VISTA, a redevelopment agency formed pursuant to Health and Safety Code §§ 33000 *et seq.* ("**Agency**"), SAN DIEGO UNIFIED PORT DISTRICT, a Port District formed pursuant to Harbors and Navigations Code App. 1, §§ 1 *et seq.* (hereinafter referred to as "**Port**") and ROHR, INC., operating as BFGoodrich Aerospace Aerostructures Group, a Delaware corporation and wholly owned subsidiary of The BFGoodrich Company (hereinafter referred to as "**BFG**"). All references in this Agreement to "**City/Agency**" shall refer collectively to City and Agency. City, Agency, Port and BFG are from time to time hereinafter referred to individually as a "**party**" and collectively as the "**parties**."

The parties agree as follows:

### Section 1. RECITALS

**1.1 Existing BFG Campus.** BFG, Port and Agency own certain real property at the Chula Vista Bayfront (the "**Bayfront**", as further defined in Section 2.8), in the City of Chula Vista, California. BFG is the owner of a manufacturing facility on real property located at the Bayfront, as depicted on the attached Exhibit A (the "**Existing Campus**," as further defined in Section 2.45).

**1.2 Redevelopment and Eminent Domain.** The Port wishes to realign BFG and Port ownership interests at the Bayfront to improve opportunities for development of Port tidelands consistent with the Port's tidelands trust. Realignment of the ownership interest of BFG and the Port will result in acquisition of property uniquely situated to afford the Port substantially greater Bayfront development opportunities. Accordingly, the Port has indicated its intention, subject to compliance with all applicable California laws, to acquire the "**BFG Property**" (as defined in Section 2.10) by power of eminent domain, since BFG has not expressed any interest in the sale or other disposition of the BFG Property. By executing and delivering this Agreement, the Port and BFG agree to avoid the necessity of eminent domain proceedings, and to cause the realignment of the BFG Property and related properties, all as set forth herein.

**1.3 Purpose of Agreement and Related Agreements.** The purpose of this Agreement is to set forth the fundamental terms of the parties' contract concerning certain land transfers, relocation of BFG's facilities to the "**New Campus**" (as depicted in the attached Exhibit B and as defined in Section 2.71), creation of public thoroughfares, management of

environmental issues, and development and use of the property comprising the New Campus and the South Campus. The parties intend to enter into the following additional agreements containing further detailed terms and conditions regarding these matters (the "*Related Agreements*"):

- (a) Port-BFG Land Transfer Agreement;
- (b) Agency-BFG Land Transfer Agreement;
- (c) Development Agreement;
- (d) Tidelands Use and Occupancy Permit; and
- (e) Right of Entry Permit.

**1.4 Reservation of Discretion.** BFG acknowledges and agrees that, notwithstanding the terms and conditions of this Agreement, Port, City and Agency reserve their discretion to approve or disapprove all future actions contemplated hereby which require by law the exercise of discretion and which Port, City and Agency cannot lawfully be committed to by contract (collectively, "*Discretionary Actions*"). Such reservation of discretion shall apply to all contemplated legislative and quasi-judicial actions including, without limitation, approval of land use entitlements, CEQA compliance, the exercise of eminent domain, code enforcement and the making of findings and determinations required by law. In the event that Port, City or Agency shall take or fail to take any Discretionary Action with respect to the subject matter of this Agreement, any such action or inaction shall not constitute a breach of such party's obligations under this Agreement.

## **Section 2. DEFINITIONS**

In this Agreement, unless the context otherwise requires:

**2.1 "*ADR Provider*"** shall have the meaning set forth in Section 9.5.1

**2.2 "*Affected Party*"** shall have the meaning set forth in Section 9.2.1.

**2.3 "*Agency*"** means the Redevelopment Agency of the City of Chula Vista, a political subdivision in the State of California exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000, *et seq.*).

**2.4 "*Agency-BFG Land Transfer Agreement*"** means the Land Transfer Agreement between Agency and BFG described in Section 3.2.

**2.5 "*Agency Fund*"** shall have the meaning set forth in Section 3.6.1.

5-20

2.6 "**Agency Parcel**" means the real property Agency owns on Bay Boulevard south of Lagoon Drive, comprising approximately 3.65 acres, as shown on the Site Map attached as Exhibit C.

2.7 "**Agreement**" means this Relocation Agreement.

2.8 "**Bayfront**" means the property located in the City of Chula Vista, California bounded by F Street and Lagoon Drive to the north, Interstate 5 to the east, J Street and Marina Parkway to the south, and the San Diego Bay to the west.

2.9 "**BFG**" means Rohr, Inc., operating as BFGoodrich Aerospace Aerostructures Group, a Delaware corporation and wholly owned subsidiary of The BFGoodrich Company.

2.10 "**BFG Property**" means the real property owned in fee by BFG located south of the northerly boundary of the proposed H Street Extension comprising approximately 37.58 acres and as more particularly shown on the Site Map attached as Exhibit C.

2.11 "**BFG Relocation**" means the relocation and consolidation of BFG's facilities and operations from the South Campus to the New Campus as described in Sections 4 and 5.

2.12 "**BFG Subleases**" shall have the meaning set forth in Section 3.7.1.

2.13 "**CEQA**" means the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.* and the Guidelines promulgated thereunder.

2.14 "**CHGC**" shall have the meaning set forth in Section 3.7.1.

2.15 "**City**" means the City of Chula Vista, a municipal corporation having charter powers.

2.16 "**City/Agency**" shall have the meaning set forth in the introductory paragraph of this Agreement.

2.17 "**Claims and Fees**" shall have the meaning set forth in Section 9.1.1.

2.18 "**Closing**" shall have the meaning set forth in Section 8.1.

2.19 "**Closing Date**" shall have the meaning set forth in Section 8.1.

2.20 "**Combined Campus Available Revenues**" shall have the meaning set forth in Section 5.4.4.

2.21 "**Combined Campus Base Revenues**" shall have the meaning set forth in Section 5.4.4.

2.22 "**Costs**" shall have the meaning set forth in Section 7.2.1.

5-21

2.23 *"Covered Areas"* shall have the meaning set forth in Section 6.5.

2.24 *"Deferred Obligation"* shall have the meaning set forth in Section 5.4.6.

2.25 *"Demolition"* shall have the meaning set forth in Section 7.2.10.

2.26 *"Development Agreement"* shall have the meaning set forth in Section 6.1.

2.27 *"Development Agreement Effective Date"* shall have the meaning set forth in Section 6.1.1.

2.28 *"Development Agreement Statute"* means Title 7, Chapter 4, Article 2.5, §§ 65864 through 65869.5 of the Government Code.

2.29 *"Development Plan"* shall have the meaning set forth in Section 7.3.1(g)(1)(i).

2.30 *"Disapproved Exception"* shall have the meaning set forth in Section 3.1.6.

2.31 *"Discretionary Actions"* shall have the meaning set forth in Section 1.4.

2.32 *"Dispute"* shall have the meaning set forth in Section 9.5.1.

2.33 *"Easement Area"* shall have the meaning set forth in Section 6.2.1(b).

2.34 *"Effective Date"* means the effective date of this Agreement as set forth in the introductory paragraph hereof.

2.35 *"Entry Statement"* shall have the meaning set forth in Section 6.2.1(b).

2.36 *"Environmental Conditions"* means the presence of Hazardous Substances.

2.37 *"Environmental Claims"* means any lawsuits or claims or requirements of government agencies (including, without limitation, all cost recovery actions, suits, proceedings, administrative orders, causes of action, judgments, injunctions, settlements, fines or penalties) made by any person or entity resulting from, concerning, or arising out of or in connection with Environmental Conditions, Environmental Releases or Environmental Remediation Activities. Provided, however, that Environmental Claims shall not include fines or penalties imposed upon a specific party by a government agency based on unreasonable actions by that party.

2.38 *"Environmental Costs"* means the Costs resulting from, concerning, or arising out of or in connection with Environmental Conditions, Environmental Releases, Environmental Remediation Activities, and Environmental Claims; provided however that Environmental Costs shall specifically not include consequential, or punitive damages.

2.39 *"Environmental Laws"* means any federal, state or local law, statute, regulation, rule, ordinance, permit, prohibition, restriction, requirement, agreement, consent or approval, or any determination, directive, judgment, decree or order of any executive, administrative or judicial authority at any federal, state or local level (whether now existing or

subsequently adopted or promulgated) relating to (a) environmental and/or toxic contamination or pollution or (b) the protection of the environment, natural resources or public health or safety from hazardous substances, materials, wastes, pollutants or contaminants.

**2.40 "Environmental Matters"** means all matters concerning, or arising out of or in connection with Environmental Conditions, Environmental Claims, Environmental Costs, Environmental Releases and/or Environmental Remediation Activities.

**2.41 "Environmental Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Substance, including the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substance.

**2.42 "Environmental Remediation Activities"** means the investigation, administration, compliance, mitigation, remediation, cleanup or related actions resulting from, concerning, or arising out of or in connection with Environmental Conditions, Environmental Claims or Environmental Releases.

**2.43 "Excluded BFG Property"** means the property described in Section 3.1.1(b).

**2.44 "Existing Approvals"** means all Project Approvals applicable to the real property comprising the New Campus as of the Development Agreement Effective Date.

**2.45 "Existing Campus"** means that certain real property owned or leased by BFG described in Exhibit A, including the property leased from the Port, SDG&E, and SD&AERC, located at the Bayfront on which BFG currently operates a manufacturing facility.

**2.46 "Existing Rules, Regulations and Official Policies"** shall have the meaning set forth in Section 6.1.1.

**2.47 "Fiscal Year"** shall have the meaning set forth in Section 5.4.2.

**2.48 "Force Majeure"** shall have the meaning set forth in Section 9.2.

**2.49 "Foster"** shall have the meaning set forth in Section 3.7.1.

**2.50 "Funding Request"** shall have the meaning set forth in Section 3.6.2.

**2.51 "General Plan"** means the City of Chula Vista General Plan.

**2.52 "H Street Boyle Study"** shall have the meaning set forth in Section 4.2.

**2.53 "H Street Extension"** means the H Street Extension described in Section 4.2 and shall include substantially all of the project elements (including without limitation, utility lines and infrastructure) as depicted by the H Street Boyle Study.

5-23

**2.54 "Hazardous Substance"** means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent," "hazardous substance," "hazardous waste constituent," "infectious waste," "medical waste," "biohazardous waste," "extremely hazardous waste," "pollutant," "toxic pollutant," "chemical constituent," "solid waste," or "contaminant," or any other formulation intended to classify substances by reason of properties that are deleterious to the environment, natural resources or public health or safety including without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Without limiting the generality of the foregoing, Hazardous Substances shall include any form of natural gas, as well as any petroleum products or any fraction thereof, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures, or byproducts, damages or threatens to damage the environment, natural resources or public health or safety, or is required by any law or public entity to be remediated, including remediation which such law or public entity requires in order for real property to be put to any lawful purpose.

**2.55 "Industrial Impacts"** shall have the meaning set forth in Section 6.1.5.

**2.56 "Industrial Use Standard"** shall have the meaning set forth in Section 7.5.4.

**2.57 "Injured Party"** shall have the meaning set forth in Section 9.2.3.

**2.58 "Installment"** shall have the meaning set forth in Section 5.4.1.

**2.59 "Installment Amount Due"** shall have the meaning set forth in Section 5.4.4.

**2.60 "Installment Payment Date"** shall have the meaning set forth in Section 5.4.1.

**2.61 "Interim Use Period"** shall have the meaning set forth in Section 6.2.1(a).

**2.62 "Land Transfer Agreements"** means the Agency-BFG Land Transfer Agreement and the Port-BFG Land Transfer Agreement described in Section 3.

**2.63 "Long Term Lease"** means the lease described in Section 3.1.2(a)(i).

**2.64 "Marina Parkway Boyle Study"** shall have the meaning set forth in Section 4.3.

**2.65 "Marina Parkway Realignment"** shall have the meaning set forth in Section 4.3.

**2.66 "Master Plan"** shall mean the Master Plan of the Port District as amended from time to time.

5-2A



2.67 "**MTDB**" means the Metropolitan Transit Development Board.

2.68 "**MTDB Leases**" means the Commercial Lease dated September 19, 1957, between SD&AERC and Rohr Aircraft Corporation, and the Railroad Lease Agreement dated February 12, 1998, between SD&AERC and BFG.

2.69 "**MTDB Parcel**" means the real property described in Section 3.1.4(a).

2.70 "**MTDB Railway**" shall have the meaning set forth in Section 3.1.4(b).

2.71 "**New Campus**" means the real property north of H Street on which BFG will consolidate and relocate its facilities (including the property to be acquired by BFG pursuant to this Agreement), as shown on Exhibit B, comprised initially of the property owned in fee by BFG, the Rados Parcel, the Agency Parcel, the SDG&E Parcel, Port Parcel 1 and Port Parcel 2. The MTDB Parcel (or any of the other foregoing properties) shall be included in the definition of New Campus if it is transferred to BFG subsequent to Closing. In the event BFG elects to close without receiving title to (or a possessory interest in) one or more of the foregoing properties, the New Campus shall not include such properties unless title to (or a possessory interest in) such properties is subsequently acquired.

2.72 "**New Campus Industrial Financing Assistance**" shall have the meaning set forth in Section 5.4.

2.73 "**New Rules**" shall have the meaning set forth in Section 6.1.3.

2.74 "**Notifying Party**" shall have the meaning set forth in Section 9.1.2.

2.75 "**Option Notice**" shall have the meaning set forth in Section 6.2.1(c)(3).

2.76 "**Original Purchase Price**" shall have the meaning set forth in Section 6.2.1(c)(1).

2.77 "**Parties**" shall have the meaning set forth in the introductory paragraph of this Agreement.

2.78 "**Permitted Uses**" means all uses for which the Existing Campus is currently used, including, without limitation, manufacturing and related operations (including all activities associated with the research, development, manufacture, assembly, processing, testing, servicing, repairing, storage and/or distribution of products and component parts and all activities incidental thereto), accessory uses and buildings (including off-street parking and loading facilities, administrative, executive and financial offices and incidental services, such as restaurants to serve employees) and all other uses of the same general character as the foregoing in each case that are consistent and in compliance with the Rules, Regulations and Official Policies applicable to the Existing Campus as of the Closing Date; provided, however, that nothing herein shall be construed to permit any uses which are inconsistent with public health and safety.

5 25

**2.79 "Port"** means the San Diego Unified Port District formed pursuant to the San Diego Unified Port District Act, Harbors and Navigation Code App. 1, §§ 1 *et seq.*

**2.80 "Port-BFG Land Transfer Agreement"** means the Land Transfer Agreement between Port and BFG described in Section 3.

**2.81 "Port Loan"** shall have the meaning set forth in Section 5.4.4.

**2.82 "Port Parcel 1," "Port Parcel 2," and "Port Parcels"** means the parcels of real property to be transferred by Port to BFG described in Section 3.1.2.

**2.83 "Port Property Agreements"** means (a) the Lease between the City and Rohr Aircraft Corporation dated March 20, 1959; (b) the Tidelands Use and Occupancy Permit dated April 15, 1997, between Port and BFG; and (c) the Tidelands Use and Occupancy Permit dated April 25, 1997, between Port and BFG.

**2.84 "Project Approvals"** means all General Plan and Specific Plan designations, policies and procedures, zoning, owner participation agreements, design review, parcel maps, tentative and final subdivision maps, environmental approvals (including CEQA approvals), lot line adjustments, building permits, grading permits, preliminary and final development plans, certificates of occupancy and all other land use, environmental and building approvals, permits and entitlements applicable to the property comprising the New Campus.

**2.85 "Rados Option"** shall have the meaning set forth in Section 6.2.1(c).

**2.86 "Rados Option Purchase Price"** shall have the meaning set forth in Section 6.2.1(c)(1).

**2.87 "Rados Option Term"** shall have the meaning set forth in Section 6.2.1(c)(2).

**2.88 "Rados Parcel"** means the parcel of real property described in Section 3.2.2(a).

**2.89 "Receiving Party"** shall have the meaning set forth in Section 7.6.5.

**2.90 "Related Agreements"** means the agreements described in Section 1.3.

**2.91 "Relocation Period"** shall have the meaning set forth in Section 4.1.

**2.92 "Relocation Schedule"** means the schedule for relocation of BFG's facilities described in Section 4.4.

**2.93 "REP"** shall have the meaning set forth in Section 4.1.

**2.94 "RFP"** shall have the meaning set forth in Section 6.4.3.

**2.95 "Responding Party"** shall have the meaning set forth in Section 9.1.2.

B24

**2.96 "Rules, Regulations and Official Policies"** means the rules, regulations, ordinances, laws, general or specific plans, zoning, performance standards and official policies governing development, design, density and intensity of use, permitted uses, growth management, environmental review, construction and building standards (with the exception of the Uniform Building Code and similar uniform safety regulations, which may change from time to time) and design criteria relating to development or use of real property.

**2.97 "SD&AERC"** means the San Diego & Arizona Eastern Railway Company.

**2.98 "SDG&E"** means the San Diego Gas & Electric Company.

**2.99 "SDG&E Lease"** shall have the meaning set forth in Section 3.7.2.

**2.100 "SDG&E Land"** means the land that is the subject of the SDG&E Lease between BFG and SDG&E covering the SDG&E Parcel and property owned by SDG&E south of the New Campus as shown on Exhibit A.

**2.101 "SDG&E Lines"** shall have the meaning set forth in Section 3.1.3(b).

**2.102 "SDG&E Parcel"** means the parcel of real property described in Section 3.1.3(a).

**2.103 "Sensitive Receptors"** shall have the meaning set forth in Section 6.1.5.

**2.104 "SLC"** means the California State Lands Commission.

**2.105 "Site Map"** means the site map shown on Exhibit C.

**2.106 "South Campus"** means the portion of the Existing Campus located on property south of the northerly boundary of the proposed H Street Extension, including the South Campus Leased Property, as shown on Exhibit A.

**2.107 "South Campus Environmental Claims"** shall have the meaning set forth in Section 7.2.1.

**2.108 "South Campus Environmental Conditions"** shall have the meaning set forth in Section 7.2.1.

**2.109 "South Campus Environmental Costs"** shall have the meaning set forth in Section 7.2.1.

**2.110 "South Campus Environmental Releases"** shall have the meaning set forth in Section 7.2.1.

**2.111 "South Campus Environmental Remediation Activities"** shall have the meaning set forth in Section 7.2.1.

**2.112 "South Campus Leased Property"** shall have the meaning set forth in Section 4.6.

5-27

2.113 "*Specific Plan*" means the Bayfront Specific Plan of the City of Chula Vista.

2.114 "*Structures*" shall have the meaning set forth in Section 7.2.10.

2.115 "*Subsequent Approvals*" shall have the meaning set forth in Section 6.1.2.

2.116 "*Title Notice*" shall have the meaning set forth in Section 3.1.6.

2.117 "*Transfer Activities*" shall have the meaning set forth in Section 3.6.1.

2.118 "*Transfer Approval*" shall have the meaning set forth in Section 3.1.5.

2.119 "*Transfer Notice*" shall have the meaning set forth in Section 3.1.4(c).

2.120 "*Transfer Payments*" shall have the meaning set forth in Section 5.1.

2.121 "*Transfer Properties*" means the properties to be transferred in accordance with Section 3.

2.122 "*TUOP*" shall have the meaning set forth in Section 4.1.

2.123 "*Underground Storage of Hazardous Substances*" shall have the meaning set forth in Section 7.2.9.

2.124 "*Underground Storage Tanks*" shall have the meaning set forth in Section 7.2.9.

2.125 "*Underground Tank Regulations*" shall have the meaning set forth in Section 7.2.9.

### Section 3. LAND TRANSFER AGREEMENTS

The parties shall enter into "*Land Transfer Agreements*" concerning the transfer of certain real property described in this Section 3 ("*Transfer Properties*") all upon the terms and conditions described in this Section 3.

**3.1 Land Transfer Agreement Between Port and BFG.** Port and BFG shall enter into the "*Port-BFG Land Transfer Agreement*" containing the terms and conditions described in this Section 3 and such other terms as may be necessary or customary for a transaction of this nature.

5-29

### 3.1.1 South Campus Transfers.

(a) **Property to be Transferred to the Port.** BFG shall transfer to the Port the BFG Property including all buildings and improvements located thereon, except for the Excluded BFG Property (defined below).

(b) **Excluded BFG Property.** Prior to the expiration of the Relocation Period, BFG shall remove from the BFG Property personal property, furnishings, fixtures, machinery, equipment, inventory, tools and the like (the "**Excluded BFG Property**") and such property shall not be transferred by BFG to the Port. BFG shall repair any damage to structural elements of buildings (walls, ceiling, foundations and utility services) on the South Campus caused by removal of trade fixtures, provided that such buildings are not intended by the Port to be demolished within 120 days of BFG's relocation from the building.

### 3.1.2 Port Parcels.

(a) **Property to be Transferred to BFG.** The Port shall transfer to BFG the following real property ("**Port Parcels**"):

(i) Port Parcel 1. The Port shall transfer to BFG a portion of the real property currently ground leased by BFG from the Port under the Lease dated March 20, 1959, between the City and Rohr Aircraft Corporation (the "**Long Term Lease**"), comprising approximately 9.99 acres, located north of the H Street Extension and east of Marina Parkway, as shown on Exhibit C ("**Port Parcel 1**"). Port Parcel 1 includes buildings, improvements, fixtures and personal property, which are currently owned, and will continue to be owned, by BFG.

(ii) Port Parcel 2. The Port shall transfer to BFG the real property, comprising approximately 5.0 acres, located west of Port Parcel 1, in the triangular area from the easterly edge of the existing Marina Parkway right-of-way, north of the H Street Extension, and continuing west to include portions of the existing Marina Parkway and G Street rights-of-way and the Port-owned parcels west, south and north of such rights-of-way, as shown on Exhibit C ("**Port Parcel 2**"). Port Parcel 2 shall include any buildings and improvements located thereon, including one (1) groundwater monitoring well and related equipment.

(iii) Separate Parcels. The Port shall, at no cost to BFG, take all steps necessary to create and convey to BFG the Port Parcels as separate legal parcels according to applicable law.

### 3.1.3 SDG&E Property.

(a) **Property to be Transferred to BFG.** The Port shall convey to BFG the land located within the New Campus comprising approximately 7.41 acres as shown on Exhibit C (the "**SDG&E Parcel**"). The SDG&E Parcel is part of a larger parcel of property recently acquired by the Port from SDG&E. The Port shall, at no cost

to BFG, take all steps necessary to create and convey to BFG the SDG&E Parcel as a separate legal parcel according to applicable law.

(b) **Condition of SDG&E Parcel.** The Port and BFG acknowledge that the SDG&E Parcel currently contains above-ground electrical transmission lines and towers, related equipment, an underground natural gas line and an underground hot oil line (collectively, the "*SDG&E Lines*"). BFG acknowledges that the conveyance shall not include the SDG&E Lines. The SDG&E Parcel shall be conveyed to BFG subject to an existing easement for continued use of the portions of the SDG&E Parcel on which the SDG&E Lines are currently located as more fully set forth in that certain Quitclaim Deed, Easement Reservation and Covenant Agreement between SDG&E and the Port previously delivered to BFG and recorded in the Official Records of San Diego County.

#### 3.1.4 MTDB Property.

(a) **Property to be Transferred to BFG.** The Port shall use its best efforts to acquire and convey to BFG, or cause to be conveyed to BFG, the land currently owned by SD&AERC between H Street and Lagoon Drive, as shown on Exhibit C (the "*MTDB Parcel*"). City/Agency shall reasonably cooperate with Port's MTDB Parcel acquisition efforts.

(b) **Condition of MTDB Parcel.** The parties acknowledge that the MTDB Parcel currently contains an active rail line and related equipment (collectively, the "*MTDB Railway*"), and the MTDB Railway must be legally vacated and abandoned by MTDB and all users of the MTDB Railway prior to transfer to BFG. The Port shall use its best efforts to cause the vacation and abandonment of the MTDB Railway by MTDB and all users of the MTDB Railway. City/Agency shall reasonably cooperate with Port's MTDB Railway vacation and abandonment efforts.

(c) **Purchase of the MTDB Property.** Promptly after Port acquires or secures the right to acquire the MTDB Parcel, Port shall provide BFG written notice (the "*Transfer Notice*") evidencing BFG's opportunity to acquire the MTDB Parcel from, or through, Port. The parties acknowledge that the sum of \$212,573 (equal to \$2.00 per square foot for the 2.44 acre/106,286.4 square foot parcel), has been prepaid by BFG for the MTDB Parcel as a good faith estimate of its "fair market value." Within thirty (30) days after delivery of the Transfer Notice, BFG or Port may elect by written notice to the other to seek an adjustment (up or down) of the \$212,573 prepayment for the MTDB Parcel, based upon the "fair market value" of the MTDB Parcel in its then "as is" condition at the time of delivery of the Transfer Notice. Promptly thereafter, Port and BFG shall negotiate in good faith for a period of thirty (30) days to attempt to mutually agree upon the "fair market value" of the MTDB Parcel. If the parties are unable to agree upon a determination of "fair market value," then prior to the expiration of the 30-day negotiation period, Port and BFG shall mutually appoint one (1) MAI appraiser to determine the "fair market value" of the MTDB Parcel which shall be binding upon both parties. Upon determination of the "fair market value" of the MTDB Parcel (\$212,573, or otherwise), or promptly thereafter, BFG shall acquire the MTDB Parcel from or through Port, and an appropriate cash adjustment shall be made in the event the "fair

market value" of the MTDB Parcel is determined to be greater, or less than, \$212,573 based upon the foregoing criteria. If the Port is unable to acquire the MTDB Parcel within two years after the Closing Date, or upon prior request by BFG, the prepayment of \$212,573 shall be repaid by the Port to BFG within 30 days.

**3.1.5 Approval of Land Transfer by State Lands Commission.** The parties acknowledge that completion of the land transfers between Port and BFG will require certain approvals by the SLC for the Port Parcels to be conveyed to BFG free of the public trust (collectively, the *"Transfer Approval"*). Such determinations may include appropriate findings by the SLC that the Port Parcels are no longer useful for trust purposes. The parties shall use their best efforts to finalize and execute the Related Agreements as rapidly as possible and Port shall use its best efforts to expeditiously seek the Transfer Approval.

**3.1.6 Title Exceptions.** Each transferee party shall review the status of title with respect to the Transfer Properties which such transferee party will receive, for purposes of determining whether there are any title exceptions encumbering such Transfer Properties which the transferee party reasonably elects to have removed. On or before September 8, 1999, each transferee party shall provide written notice (the *"Title Notice"*) to the other parties to this Agreement describing each exception which such transferee reasonably elects to have removed from its respective Transfer Properties (each, a *"Disapproved Exception"*). Each party to this Agreement shall, prior to Closing: (i) remove from any Transfer Property (whether owned, or not owned, by such party) any Disapproved Exception pursuant to which such party is a beneficiary, and (ii) use commercially reasonable efforts to remove from any then-owned Transfer Property any Disapproved Exceptions that benefit third parties.

**3.2 Land Transfer Agreement Between Agency and BFG.** The Agency and BFG shall enter into a Land Transfer Agreement (*"Agency-BFG Land Transfer Agreement"*) upon the terms and conditions described in this Section and such other terms as may be necessary or customary for a transaction of this nature.

**3.2.1 Agency Parcel.**

(a) **Property to be Transferred to BFG.** The Agency shall transfer to BFG the "Agency Parcel."

(b) **Condition of Agency Parcel.** The Agency Parcel shall be cleared and graded by the Agency without cost to BFG. Unless the parties otherwise agree, grading shall be to the contours reasonably required by BFG.

(c) **Purchase Price.** The purchase price to be paid by BFG to Agency for the Agency Parcel is \$1,271,952. The purchase price shall be paid to Agency from the funds deposited by the Port into Escrow for BFG's account pursuant to Section 3.6.1.

**3.2.2 Rados Parcel.**

531

(a) **Property to be Transferred to BFG.** The Agency shall arrange for the transfer to BFG of the land currently owned by Rados Bros. and located at the corner of Bay Boulevard and Lagoon Drive, comprising approximately 3.02 acres, as shown on Exhibit C (the "*Rados Parcel*").

(b) **Condition of Rados Parcel.** The Rados Parcel shall be cleared and graded by the Agency, without cost to BFG. Unless BFG and the Agency otherwise agree, grading shall be to the contours reasonably required by BFG.

(c) **Acquisition of Rados Parcel.** BFG and the Agency acknowledge that the Rados Parcel is currently privately owned. If a voluntary acquisition cannot be arranged between the Agency and the owner of the Rados Parcel allowing the transfer of the Rados Parcel to BFG on the Closing Date, then the Agency shall agendize for consideration by the Agency Board a Resolution of Necessity which, if adopted by the Agency Board, would authorize the acquisition of the Rados Parcel by eminent domain. BFG acknowledges and agrees that by entering into this Agreement, the Agency has not precommitted itself to commencement of eminent domain proceedings with respect to the Rados Parcel and the Agency reserves the right, in its sole discretion to approve or disapprove a Resolution of Necessity with respect thereto. In the event that Agency is not able to acquire the Rados Parcel voluntarily, and either elects not to pursue eminent domain or is unsuccessful in its pursuit, and as a result is unable to deliver an Order of Possession for the Rados Parcel as of the Closing, BFG shall have the option, in its sole discretion, of electing either to (i) terminate this Agreement, or (ii) receive One Million Fifty-Two Thousand Four Hundred and Nine Dollars (\$1,052,409) in lieu of acquisition of the Rados Parcel. If, as of the Closing Date, BFG elects to receive \$1,052,409 in lieu of the Rados Parcel, and the Agency has withdrawn all or part of this amount out of Escrow pursuant to Section 3.6.2, Agency shall pay the amount of such withdrawal directly to BFG within 10 days of receipt of notification of BFG's election, and BFG shall withdraw the balance (if any) up to the amount of \$1,052,409 out of Escrow. In no event shall Agency's disapproval of a Resolution of Necessity with respect to the Rados Parcel constitute an Agency breach of its obligations hereunder. In the event that Agency approves a Resolution of Necessity with respect to the Rados Parcel, Agency agrees to file a condemnation action within twenty (20) days of such approval and exercise best efforts to expeditiously obtain an Order of Possession with respect thereto.

(d) **Purchase Price.** The purchase price to be paid by BFG to Agency for the Rados Parcel shall be the amount paid by Agency to the private owner thereof, whether determined through a voluntary agreement, by settlement, or through a court proceeding, provided, however, in no event shall said purchase price exceed the amount paid to the City/Agency pursuant to Section 3.6.1 for all Transfer Activities minus the amount paid to the Agency for the Agency Parcel pursuant to Section 3.2.1(c). The purchase price shall be paid to Agency from the funds deposited by the Port into Escrow for BFG's account pursuant to Section 3.6.1.

### **3.3 Transfer and Acceptance of Property "As-Is."**

#### **3.3.1 Property Transferred to Port.**



(a) **Acknowledgment of "As-Is" Transfer.** Port acknowledges and agrees that the BFG Property is to be conveyed to and accepted by Port in an "as-is" condition, with all faults, and that, except as to those representations and warranties expressly set forth in the Port-BFG Land Transfer Agreement, neither BFG, City or Agency, nor any of their agents or employees has made any representations or warranties of any kind in connection with any matter related to the condition, value, fitness or use of the BFG Property.

(b) **Release.** Port hereby waives, releases, acquits, and forever discharges BFG, to the maximum extent permitted by law, of and from any claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that now exist or that may arise in the future on account of or in any way growing out of or connected with the ownership, use or occupancy of the BFG Property or the South Campus Leased Property prior to the Closing Date, including, without limitation, the physical and environmental condition (including, without limitation an Environmental Condition) of the property and any structures or improvements located thereon. In connection with the foregoing release, Port acknowledges and expressly waives any of its rights under California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Notwithstanding the foregoing, the acknowledgment and release set forth in these Sections 3.3.1(a) and (b) are not intended to, and shall not, release or discharge any duties, obligations, liabilities, representations or warranties of BFG that are expressly set forth in this Agreement or the Port-BFG Land Transfer Agreement, including, but not limited to, the provisions of Section 7 hereof.

### **3.3.2 Property Transferred to BFG.**

(a) **Acknowledgment of "As-Is" Transfer.** BFG acknowledges and agrees that the Port Parcels and the SDG&E, MTDB, Agency and Rados Parcels are to be conveyed to and accepted by BFG in an "as-is" condition, with all faults, and that, except as to those representations and warranties expressly set forth in the Port-BFG Land Transfer Agreement and the Agency-BFG Land Transfer Agreement, neither Port, City or Agency, nor any of their agents or employees has made any representations or warranties of any kind in connection with any matter related to the condition, value, fitness or use of any of such properties.

#### **(b) Release.**

(i) **Port.** BFG hereby waives, releases, acquits, and forever discharges Port to the maximum extent permitted by law, of and from any claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses or

5-33

compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that now exist or that may arise in the future on account of or in any way growing out of or connected with the ownership, use or occupancy of the Port Parcels and the SDG&E and MTDB Parcels prior to the date the property in question is conveyed to BFG including, without limitation, the physical and environmental condition (including, without limitation an Environmental Condition) of the property and any structures or improvements located thereon. In connection with the foregoing release, BFG acknowledges and expressly waives any of its rights under California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Notwithstanding the foregoing, the acknowledgment and release set forth in these Sections 3.3.2(a) and 3.3.2(b)(i) are not intended to, and shall not, release or discharge any duties, obligations, liabilities, representations or warranties of Port that are expressly set forth in this Agreement or the Port-BFG Land Transfer Agreement, including, but not limited to, the provisions of Section 7 hereof.

(ii) City/Agency. BFG hereby waives, releases, acquits, and forever discharges City/Agency to the maximum extent permitted by law, of and from any claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that now exist or that may arise in the future on account of or in any way growing out of or connected with the ownership, use or occupancy of the Agency and Rados Parcels and the vacated portion of Marina Parkway (and H Street to the extent any vacated portion thereof is acquired by BFG) prior to the date the property in question is conveyed to BFG including, without limitation, the physical and environmental condition (including, without limitation an Environmental Condition) of the property and any structures or improvements located thereon. In connection with the foregoing release, BFG acknowledges and expressly waives any of its rights under California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Notwithstanding the foregoing, the acknowledgment and release set forth in these Sections 3.3.2(a) and 3.3.2(b)(ii) are not intended to, and shall not, release or discharge any duties, obligations, liabilities, representations or warranties of City/Agency that are expressly set forth in this Agreement, or the Agency-BFG Land Transfer Agreement, including but not limited to, the provisions of Section 7 hereof.

5-34

### **3.4 Indemnities After Closing Date.**

**3.4.1 Port Indemnity.** Port shall release, discharge, indemnify, defend and hold harmless BFG from all claims, liabilities, losses, costs, and expenses (including, without limitation, Environmental Costs resulting from an Environmental Release occurring after the Closing Date) resulting from the Port's ownership, use or occupancy of the BFG Property and the South Campus Leased Property on and after the Closing Date. Provided, however that, with respect to South Campus property that BFG continues to occupy after the Closing Date (pursuant to a Tidelands Use and Occupancy Permit and/or a Right of Entry Permit) during the Relocation Period, BFG shall release, discharge, indemnify, defend and hold harmless Port from all claims, liabilities, losses, costs, and expenses (including, without limitation, Environmental Costs) resulting from the acts or omissions of BFG after the Closing Date and during the term of any Tidelands Use and Occupancy Permit and/or Right of Entry Permit.

#### **3.4.2 BFG Indemnity.**

**(a) Port.** BFG shall release, discharge, indemnify, defend and hold harmless Port from all claims, liabilities, losses, costs, and expenses (including, without limitation, Environmental Costs resulting from an Environmental Release occurring after the Closing Date) resulting from BFG's ownership, use or occupancy of the Port Parcels, the SDG&E Parcel and the MTDB Parcel, on and after the date the property in question is conveyed to BFG. Provided, however, that this release shall not include claims, liabilities, losses, costs, and expenses (including, without limitation, Environmental Costs) resulting from the acts or omissions of Port after the Closing Date, and Port shall release, discharge, indemnify, defend and hold harmless BFG from all claims, liabilities, losses, costs, and expenses (including, without limitation, Environmental Costs) resulting directly from such acts.

**(b) Agency.** BFG shall release, discharge, indemnify, defend and hold harmless Agency from all claims, liabilities, losses, costs, and expenses (including, without limitation, Environmental Costs resulting from an Environmental Release occurring after the Closing Date) resulting from BFG's ownership, use or occupancy of the Agency and Rados Parcels and the vacated portion of Marina Parkway (and H Street, to the extent any vacated portion thereof is acquired by BFG) on and after the date the property in question is conveyed to BFG; provided, however, that this release shall not include claims, liabilities, losses, costs, and expenses (including, without limitation, Environmental Costs) resulting from the acts or omissions of Agency after the Closing Date, and Agency shall release, discharge, indemnify, defend and hold harmless BFG from all claims, liabilities, losses, costs, and expenses (including, without limitation, Environmental Costs) resulting directly from such acts. This release and indemnity shall also include the City but only with respect to the vacated portion of Marina Parkway and H Street to the extent any vacated portion of H Street is acquired by BFG.

**3.5 Environmental Matters.** The responsibilities of the Port, City/Agency and BFG for the performance, management and costs of Environmental Matters and activities arising in connection with or concerning (a) the BFG Property shall be as set forth in

Sections 7.1, 7.2, 7.3, 7.5 and 7.6; and (b) the Port Parcels and SDG&E, MTDB, Agency and Rados Parcels shall be as set forth in Section 7.1, 7.4, 7.5 and 7.6. To the extent of any conflict between Sections 3.1 through 3.4, on the one hand, and Section 7, on the other hand, the provisions of Section 7 shall control.

### **3.6 Port-Agency Agreement.**

**3.6.1 Appropriation.** Prior to or concurrent with Port's execution of this Agreement, Port shall appropriate and deposit into the Escrow Three Million Dollars (\$3,000,000.00) as the Port's sole contribution towards the following financial obligations of the City and/or the Agency (collectively, the "*Transfer Activities*"): (i) acquisition of the Rados Parcel, (ii) transfer of the Agency and Rados Parcels to BFG, (iii) delivery of title policies and endorsements for the Agency and Rados Parcels as reasonably requested by BFG under the Agency-BFG Transfer Agreement, (iv) preparation of Phase I and Phase II environmental reports for the Agency and Rados Parcels, and (v) clearing and grading of the Agency and Rados Parcels and Environmental Costs related to Environmental Remediation Activities on the Agency and Rados Parcels required pursuant to Sections 3.2.1(b), 3.2.2(b) and 7.4.2 hereof. Port and City acknowledge that, of the Three Million Dollars (\$3,000,000.00) deposited hereunder, (a) One Million Two Hundred Seventy One Thousand Nine Hundred and Fifty Two Dollars (\$1,271,952.00) is being deposited for the account of BFG to be paid to Agency at Closing for the Agency Parcel; (b) One Million Fifty Two Thousand Four Hundred and Nine Dollars (\$1,052,409.00) is being deposited for the account of BFG to be paid to Agency at Closing for the Rados Parcel in the event that, at Closing, Agency has assigned to BFG an Order of Possession of the Rados Parcel and rights to after-acquired title in the event of condemnation; and (c) the balance of the Three Million Dollars (\$3,000,000.00), (Six Hundred Seventy Five Thousand Six Hundred Thirty Nine Dollars (\$675,639.00)) is being deposited for the account of Agency (to be segregated and maintained in a separate, subescrow account denominated the "*Agency Fund*") to be applied toward the Agency's costs of the Transfer Activities, including, without limitation, any costs of acquisition of the Rados Parcel in excess of \$1,052,409. The Agency's appraised value for the Rados Parcel is \$972,400; the Agency shall be basing any Agency offers to acquire the Rados Parcel on such value. Notwithstanding any other provision of this Agreement, under no circumstances shall BFG or the Port be required to pay Agency any amount other than the amounts set forth in this Section 3.6.1 for the Transfer Activities, and the Agency's obligation to perform the Transfer Activities shall exist and continue irrespective of whether the amounts specified in this Section 3.6.1 are sufficient to fund all of the Transfer Activities.

**3.6.2 Funding.** Prior to the Closing Date, Agency may seek from the Agency Fund advances for out-of-pocket costs to be incurred by the City and/or the Agency directly related to the Transfer Activities. As a condition to any advance, the Agency shall submit to the Port and the escrow holder a written request for funds (each, a "*Funding Request*") setting forth the date of any out-of-pocket expense, the nature of the expense, any invoices supporting the expense, and any other information reasonably requested by the Port. All Funding Requests shall be reasonably approved by the Port within five (5) business days after receipt; provided that Agency may not submit Funding

Requests more frequently than four times per calendar month. Following Port's approval of a Funding Request, the escrow holder shall promptly deliver funds from the Agency Fund to Agency in the amount of the approved Funding Request. At the Closing, the escrow holder shall deliver to the Agency the balance of the funds remaining in the Agency Fund.

**3.6.3 Utilization of Funds.** Agency may utilize funds in the Agency Fund for reasonable and necessary out-of-pocket expenses incurred directly in connection with or arising out of the Transfer Activities, including, without limitation, fees for third party consultants and contractors; funds required for the acquisition or condemnation of the Rados Parcel; and closing costs (title insurance, escrow fees and transfer taxes) related to the transfer of the Agency and Rados Parcels to BFG. Agency may not utilize the funds for internal expenses related to the Transfer Activities including, without limitation, general overhead; salaries or personnel expenses; fees paid to third party consultants if the services of such third party consultants could have been reasonably provided by City or Agency; and photocopying, telephone and other office expenses. Agency shall maintain reasonable records of out-of-pocket expenses incurred in connection with the Transfer Activities. Any remaining funds in the Agency Fund at the Closing shall be delivered to the Agency and may be used in Agency's sole discretion for any purpose whatsoever; provided, however, in the event that BFG elects to receive \$1,052,409 in lieu of the Rados Parcel pursuant to Section 3.2.2(c), then Port shall be reimbursed out of Escrow any remaining funds in the Agency Fund after Agency has used such funds as are necessary to perform its remaining Transfer Activities obligations hereunder with respect to the Agency Parcel.

**3.6.4 Repayment Obligation.** In the event that the Closing does not occur in accordance with this Agreement, unless otherwise agreed by Port and City/Agency any and all advances made by Port to the Agency shall be deemed to be a loan from the Port to the Agency, and shall bear interest at the rate of six percent (6%) per annum, from the date of the advance until paid in full. Any and all advances shall be due and payable by the Agency to the Port within sixty (60) days after the scheduled Closing Date. Agency shall promptly enter into a promissory note or other evidence of such loan, upon the request of the Port, in accordance with the terms and conditions set forth above and upon other commercially reasonable terms as requested by the Port.

### **3.7 Other Pre Closing Obligations and Actions.**

**3.7.1 BFG Subleases.** Prior to the Closing Date, Port shall notify BFG in writing of its decision whether to terminate or leave in place the Sublease between BFG and Community Health Group of California ("*CHGC*") dated June 6, 1994, and the Month-to-Month Sublease Agreement between BFG and Foster Properties ("*Foster*") dated July 24, 1998 (collectively the "*BFG Subleases*"). Any rent received by BFG under the BFG Subleases after January 1, 1999, shall be remitted to Port as of the Closing, and thereafter within 30 days of receipt by BFG. If Port elects to terminate one or both leases, BFG shall cooperate (at no cost to BFG) in effectuating such terminations, including giving 30 or 60 days' notice to CHGC and/or Foster, as applicable.

5-37

**3.7.2 BFG Ground Lease with SDG&E.** There is an existing ground lease between BFG and SDG&E covering the SDG&E Parcel and other property formerly owned by SDG&E shown on Exhibit A (the "**SDG&E Lease**") to which the Port is successor to SDG&E in ownership of the subject property. The Port shall forgive all rent due under the SDG&E Lease from January 1, 1999, through the date such lease is terminated. The SDG&E Lease shall be terminated in accordance with Section 4.6 of this Agreement.

**3.7.3 BFG Lease With MTDB.** There are existing lease agreements between BFG and MTDB concerning a portion of the MTDB Parcel and other property owned by MTDB as shown on Exhibit C (the "**MTDB Leases**"). The Port shall assume responsibility for all rent due to MTDB from BFG under the MTDB Leases applicable to the South Campus from January 1, 1999, through the Closing Date.

**3.7.4 Vacation of Marina Parkway.** The transfer of Port Parcel 2 to BFG will require the vacation of portions of the public roads known as Marina Parkway and G Street. Prior to Closing, the City shall, at its sole cost, process the vacation of the current alignment of Marina Parkway north of the proposed H Street Extension, vacate G Street east of the new alignment of Marina Parkway as shown on the Marina Parkway Boyle Study, and convey the underlying property to the Port, whereupon the Port, in the exercise of its land use authority, shall create separate legal parcels corresponding to Port Parcel 1 and Port Parcel 2. The vacated sections of Marina Parkway and G Street shall be closed, and traffic diverted onto Sandpiper Way and G Street; provided, however, that in the event that, after Closing, the vacated section of Marina Parkway and G Street continue to be used for through traffic, Port shall lease to BFG, at no cost to BFG, equivalent property for use as parking until such time as the vacated sections of Marina Parkway and G Street are closed to through traffic. The exact size, configuration and legal description of Port Parcel 1 and Port Parcel 2 shall be determined in accordance with the final realignment plans for Marina Parkway, which shall be finalized in sufficient time to permit the conveyance to the Port as provided above. The final configuration of Port Parcel 2 is subject to BFG's reasonable approval, and shall in no event be less than 3.3 net useable acres, unless a smaller parcel size is acceptable to BFG, in its sole discretion. In addition, the Port, at its sole cost, shall grant City an easement for right-of-way over an area agreed to by Port and City as the likely final alignment of Marina Parkway from north of Sandpiper Way to G Street. The parties shall cooperate to adjust the easement location to the extent required by the ultimate final Marina Parkway alignment.

**3.7.5 Lot Line Adjustments.** Upon application by BFG, with the Port's full cooperation, City shall process lot line adjustments/subdivisions necessary for the extension of H Street, the realignment of G Street and Marina Parkway, and the conveyance of the Port Parcels and the SDG&E and MTDB Parcels to BFG.

**3.7.6 Certificates of Compliance.** Upon BFG's request, City shall use its best efforts expeditiously to process certificates of compliance pursuant to the California Subdivision Map Act confirming that the Port Parcels, the SDG&E Parcel, and

5-34

the MTDB Parcel constitute separate legal parcels upon and after the transfers provided for herein.

**3.8 Other Provisions.** The Land Transfer Agreements shall contain such other terms and conditions as are typically included in real property transfer agreements of a similar nature, subject to the terms of this Agreement. The applicable parties shall negotiate these terms in good faith; provided, however, that the matters of (a) the condition of title; (b) the condition of the property; (c) Environmental Matters; and (d) the other matters specifically described in this Agreement shall be incorporated into the Land Transfer Agreements in accordance with the terms of this Agreement.

**3.9 Form of Deeds.** The Transfer Properties shall be conveyed by standard title company grant deeds, except for (i) the SDG&E Parcel which shall be conveyed by quitclaim deed, (ii) the Rados Parcel which may be conveyed by assignment of an Order of Possession and rights to after-acquired title in the event of condemnation, and (iii) the MTDB Parcel which may, or may not, be conveyed by a grant deed depending upon the method of its acquisition. In addition, the Rados Parcel and Agency Parcel shall be transferred subject to the non-discrimination covenants required by California Health and Safety Code Section 33446.

#### **Section 4. BFG RELOCATION**

It is the intention of the parties that the relocation and consolidation of BFG's facilities and operations from the South Campus to the New Campus (the "**BFG Relocation**") be conducted in an orderly manner, as directed by BFG in its sole discretion, subject to the provisions of this Section 4. BFG shall be solely responsible for the management of the BFG Relocation.

**4.1 Relocation Period.** The period from January 1, 1999 through January 1, 2003, shall be referred to herein as the "**Relocation Period**." As of the Closing Date and throughout the balance of the Relocation Period, BFG and the Port shall enter into (i) a Tidelands Use and Occupancy Permit ("**TUOP**") with respect to Building 45 and any other portion of the South Campus which is utilized exclusively for BFG's ongoing business purposes, and (ii) a nonexclusive Right of Entry Permit ("**REP**") with respect to any portion of the South Campus which BFG no longer actively utilizes for ongoing business purposes. It is understood and agreed that as BFG concludes business activities on portions of the South Campus during the Relocation Period, BFG will provide the Port with written notification of that fact, and the subject property shall be removed from the TUOP, at which time BFG shall surrender its exclusive possessory rights to such portions of the South Campus in favor of nonexclusive possessory rights under the REP. At such time as BFG no longer requires nonexclusive possessory rights to portions of the South Campus under the REP, BFG shall provide the Port with written notification of that fact, and the REP shall terminate only as to those unused portions of the South Campus. Notwithstanding the foregoing, any TUOP or REP for South Campus property shall terminate no later than the end of the Relocation Period. Under the terms and conditions of the TUOP, BFG shall be obligated to pay one hundred fifty percent (150%) of fair market rental value for any property on the South Campus which BFG continues to exclusively occupy, actually or constructively, following the expiration of the Relocation Period. Constructive occupancy shall mean any use or occupancy of a portion of the South Campus

which has a material, adverse effect upon a larger area of the South Campus, such as the occupancy of a single building which materially, adversely impacts a viable development project which encompasses the occupied building.

**4.2 H Street Extension.** The H Street Extension (including appropriate heavy vehicle and other access to and from the H Street Extension and the New Campus, with traffic signals, setbacks and related matters designed to ensure conformity between the H Street Extension and the southern boundary of the New Campus) ("**H Street Extension**") as shown on Exhibit F hereto shall conform to the alignment described as Alignment 1, Profile C, in the Boyle Engineering Feasibility Study dated June 1, 1997, (the "**H Street Boyle Study**"). Upon request by City, Port, at its sole cost, shall grant City an easement for right-of-way over the alignment for the H Street Extension reflected in the H Street Boyle Study. The H Street Extension shall be completed by Port at Port's sole cost. Upon request, BFG and City/Agency shall cooperate with Port concerning the planning of the H Street Extension; provided, however, that no actions concerning the H Street Extension (including, without limitation, changes in the land-use designations for the proposed H Street Extension) or construction west of Bay Boulevard shall be commenced during the Relocation Period without BFG's prior written consent. City/Agency shall cooperate with the Port to provide for timely extension of H Street including, without limitation, (i) all aspects of design, planning, engineering and construction of H Street from Interstate 5 to Marina Parkway with appropriate setbacks and buffers; (ii) relocation of above and below ground utilities; and (iii) installation of traffic signals, sidewalks and related improvements as may be reasonably necessary to facilitate vehicle and pedestrian access along the fully developed Bayfront. Port shall use its best efforts to complete the H Street Extension on or before the earlier to occur of (a) December 31, 2009, or (b) the completion of Bayfront development projects that require the H Street Extension to address cumulative traffic impacts. If, for whatever reason, Port has insufficient funds to complete the H Street Extension in a timely manner, Port agrees to meet and confer with City to develop a plan for expediting such project using alternative funding sources. Such funding sources may include funds allocated by the Port for capital improvement projects as set forth in that certain Memorandum of Understanding between Port and City that was approved by Port on June 20, 1995.

**4.3 Marina Parkway Realignment.** The realignment of Marina Parkway (including appropriate heavy vehicle and other access to and from Marina Parkway and the New Campus, with traffic signals, setbacks and related matters designed to ensure conformity between Marina Parkway and the western boundary of the New Campus) ("**Marina Parkway Realignment**") as shown on Exhibit G hereto resulting from the land transfer between the Port and BFG shall be in accordance with the Marina Parkway Realignment Study dated November 13, 1998 completed by Boyle Engineering (the "**Marina Parkway Boyle Study**"). The Marina Parkway Realignment shall be completed by Port at Port's sole cost. In conjunction with the realignment of Marina Parkway, Port and City shall have the right to "cap" and leave in place any and all utilities located beneath the current configuration of G Street and Marina Parkway. City and Agency shall cooperate with Port to provide for timely realignment of Marina Parkway including, without limitation, (i) assistance with creation of temporary easements and dedication of new streets in the location of the newly configured Marina Parkway; (ii) all aspects of design, planning, engineering and construction of Marina Parkway with appropriate setbacks and buffers; (iii) relocation of above and below ground utilities; and (iv) installation of traffic signals, sidewalks and related improvements as may be reasonably



necessary to facilitate vehicle and pedestrian access (including heavy vehicle access to the New Campus) along the Bayfront. Port shall use its best efforts to complete the Marina Parkway Realignment on or before the earlier to occur of (a) December 31, 2003, or (b) the completion date of Bayfront development projects that require the Marina Parkway Realignment to address cumulative traffic impacts. The parties shall use their best efforts to ensure that the realigned Marina Parkway is contiguous with the western boundary of Port Parcel 2 (with appropriate setbacks and buffers). In the event that the realigned Marina Parkway is not thus contiguous, Port shall convey to BFG the land in-between the western boundary of Port Parcel 2 and the final realigned Marina Parkway, an appropriate adjustment shall be made to the purchase price of Port Parcel 2 pursuant to Section 5.2, and the property thus conveyed shall be treated in all respects under this Agreement and the Related Agreements as if such property had been included in the conveyance of Port Parcel 2.

**4.4 Relocation Schedule.** The parties shall agree upon a schedule ("*Relocation Schedule*") under which BFG will relocate its operations and permanently vacate the South Campus which BFG agrees to accomplish by no later than the expiration of the Relocation Period. Notwithstanding anything herein to the contrary, in the event of any disagreement between the parties concerning the completion of the BFG Relocation or the Relocation Schedule (provided that BFG completes the BFG Relocation by no later than the expiration of the Relocation Period), BFG's decision concerning the completion of the BFG Relocation or the Relocation Schedule shall be final and binding upon the parties. Concurrently with the execution of this Agreement, BFG shall provide the Port and City/Agency with BFG's current preliminary draft Relocation Schedule, which is provided for discussion purposes only and which shall be updated periodically. It is anticipated that the Relocation Schedule will be revised and updated on a periodic basis, with such updates being provided to the Port and City/Agency for discussion purposes only.

**4.4.1 Adjustments to Relocation Schedule.** BFG agrees to meet and confer with Port and City/Agency to effectuate adjustments to the Relocation Schedule that are not adverse to BFG in the event that potential redevelopment opportunities for the property south of H Street arise earlier than currently anticipated, including, without limitation, the vacating of specific portions of the BFG Property in order to accommodate the Port's development objectives. Furthermore, in the event Port elects to commence the H Street Extension during the Relocation Period or Port and BFG agree to accommodate redevelopment or interim use opportunities on the South Campus during the Relocation Period, and such activity causes a material adverse impact upon the Relocation Schedule, then Port shall pay to BFG its reasonable and actual incremental costs of accelerating the Relocation Schedule to accommodate such construction activities including, without limitation, the additional cost of vacating buildings, relocating equipment, and storing supplies in advance of the initial time table set forth in the Relocation Schedule. Finally, the Relocation Period shall be extended for any failure of Port or the City/Agency, following written notice from BFG that such failure is interfering with BFG's Relocation Activities, to transfer property and/or provide access or utilities to the New Campus in a timely fashion, and such failure prevents BFG from completing necessary Relocation Activities prior to the end of the Relocation Period.

5-41

**4.5 BFG Occupancy of South Campus During Relocation Period.** Beginning January 1, 1999, and throughout the Relocation Period, except for BFG's payment of ground rent in the total amount of \$50,000 to the Port for the year 1999 for the area currently ground leased for "Building 45," BFG shall incur no (or, if it does incur, shall be reimbursed by Port for) ground rent, building rent, possessory interest taxes and property taxes associated with BFG's use and occupancy of the land and improvements comprising the South Campus. BFG shall be responsible for costs incurred in connection with its business operations on the South Campus during the Relocation Period, including labor, materials, and utility costs. The parties shall enter into, amend, and terminate such agreements (including the Tidelands Use and Occupancy Permit and the Right of Entry Permit referenced in Section 1.3) as may be necessary to appropriately implement the terms of this Agreement concerning the BFG Relocation and the Relocation Period.

**4.6 Termination of Obligations Concerning the South Campus.** BFG and Port shall enter into such agreements as may be necessary and appropriate to terminate BFG's occupancy and obligations concerning that portion of the South Campus not owned by BFG ("*South Campus Leased Property*"), effective not later than the completion of the Relocation Period, that are consistent with the terms hereof. These agreements shall include, without limitation, termination of the Port Property Agreements, termination of the SDG&E Lease, and termination of the MTDB Leases applicable to the South Campus.

**4.7 Utilities and Services.** Prior to the expiration of the Relocation Period, City shall meet and confer with BFG to explore the feasibility of relocating the "G Street Pump Station" to a location off of the New Campus.

## **Section 5. RELOCATION AND NEW CAMPUS FINANCE ASSISTANCE**

**5.1 Payments.** In consideration of the property transfers and BFG's relocation costs, the Port and BFG shall make the payments described in Exhibit D at Closing ("*Transfer Payments*").

**5.2 Post-Closing Adjustments.** The parties acknowledge that the Transfer Payments are, in part, based upon the estimated size of the Transfer Properties as shown on Exhibit D and the contemplated configuration of H Street and Marina Parkway. Upon, or up to three (3) years after the Closing, following completion of new or updated surveys, any party may submit a written request to adjust the Transfer Payments to account for any difference between the actual and estimated size of the Transfer Properties and/or configuration of H Street and Marina Parkway. Following receipt of an adjustment request, the affected parties shall promptly negotiate in good faith to make any necessary cash adjustment to the Transfer Payments. Unless otherwise agreed by the affected parties, the cash adjustment shall be based on the difference between the actual size of the subject property conveyed relative to its estimated size shown on Exhibit D. For example (for illustrative purposes only), the estimated size of Port Parcel 1, as shown on Exhibit D, is 9.99 acres, or 435,164 square feet, and the purchase price of \$3,481,312 is calculated based on a value of \$8.00 per square foot ( $435,164 \times \$8.00 = \$3,481,312$ ). If the actual size of Port Parcel 1 as conveyed were 9.5 acres, or 413,820 square feet, unless BFG and the Port otherwise agreed, the purchase price would be \$3,310,560 ( $413,820 \text{ square feet} \times \$8.00$

5-42

= \$3,310,560), and BFG would be entitled to a cash payment from the Port of \$170,755 (\$3,481,312 - \$3,310,560 = \$170,752).

**5.3 Reimbursement of South Campus Property Taxes.** BFG shall (within 30 days of submission of an invoice therefor by BFG) be reimbursed by the Port for any property taxes (including possessory interest taxes) incurred by BFG concerning the South Campus attributable to tax years or portions thereof falling within the Relocation Period.

**5.4 New Campus Industrial Financing Assistance.** BFG currently expects to spend approximately \$50 million in capital investment on the New Campus. Its Board of Directors has authorized approximately \$45 million for capital expenditures on the New Campus. In connection therewith, subject to the terms and conditions set forth in this Section, in addition to the Transfer Payments to be made by Port and BFG, Agency shall provide financing assistance to BFG with respect to industrial manufacturing facilities, and related offices and ancillary support facilities, and equipment newly developed, rehabilitated, or installed on the New Campus during the Relocation Period ("*New Campus Industrial Financing Assistance*").

**5.4.1 Annual Installments.** The New Campus Industrial Financing Assistance shall be comprised of cash payments delivered to BFG in annual installments (each an "*Installment*," collectively "*Installments*"). Installments shall be due and payable on January 15th of each year beginning with the first January 15th following the Closing Date (estimated to be January 15, 2000), and ending with January 15, 2025 (each an "*Installment Payment Date*"). Agency shall have no obligation to make Installment payments after January 15, 2025.

**5.4.2 Relocation Period Payments.** Installments due and payable to BFG on Installment Payment Dates beginning with January 15, 2000, through January 15, 2003, respectively shall be determined based upon property tax information derived from the immediately preceding County fiscal year (July 1 through June 30) ("*Fiscal Year*"). The amount due and payable shall be equal to the positive difference, if any, between (a) the amount of property taxes paid by BFG to all taxing agencies with respect to the New Campus for the immediately preceding Fiscal Year; and (b) the sum of one percent (1%) of the County Assessor's valuation of (i) real and personal property located on the New Campus as of the first day after the Closing Date, plus two percent (2%) per year with respect to such real property; (ii) South Campus equipment and facilities that have been relocated to the New Campus as of June 30 of the immediately preceding Fiscal Year; and (iii) any real property contemplated as being part of the New Campus by this Agreement that is acquired by BFG after the Closing Date by on or before June 30 of the immediately preceding Fiscal Year. For partial Fiscal Year 1999/2000 the above calculations shall be modified by multiplying each figure within the calculation by a fraction determined by dividing the number of days within the period from the Closing Date to June 30, 2000, by three hundred sixty-five (365).

**5.4.3 Post-Relocation Period Payments.** Installments due and payable to BFG on Installment Payment Dates beginning on January 15, 2004 through January 15, 2025 shall be equal to the positive difference, if any, between (a) the amount of property taxes paid by BFG to all taxing agencies with respect to the New Campus for

Fiscal Year 2002/2003; and (b) the sum of one percent (1%) of the County Assessor's valuation of (i) real and personal property located on the New Campus as of the first day after the Closing Date plus two percent (2%) per year with respect to such real property; (ii) South Campus equipment and facilities that have been relocated to the new Campus as of June 30, 2003; and (iii) any real property contemplated as being part of the New Campus by this Agreement that is acquired by BFG after the Closing Date by on or before June 30, 2003. Installment payments calculated under this Section 5.4.3 shall be subject to adjustments in accordance with the terms and conditions of Sections 5.4.6 and 5.4.7, below.

**5.4.4 Port Contribution.** In the event that property tax revenues actually received by the Agency from the New Campus and South Campus, less amounts required to be set-aside and used for low and moderate income housing pursuant to California Health and Safety Code Section 33334.2 (the "Low Income Set-Aside") for any Fiscal Year commencing with Fiscal Year 1999/2000 and ending with Fiscal Year 2009/2010 ("**Combined Campus Available Revenues**") do not exceed the Agency property tax revenues actually received from the New Campus and South Campus for Fiscal Year 1998/1999 ("**Combined Campus Base Revenues**") by an amount equal to or greater than the Installment payment due and payable to BFG with respect to such Fiscal Year as determined under Section 5.4.2 and 5.4.3, above ("**Installment Amount Due**"), the Port agrees to loan to the Agency, upon Agency request, an amount equal to the amount by which the Installment Amount Due exceeds the positive difference between the Combined Campus Available Revenues for such Fiscal Year and the Combined Campus Base Revenues ("**Port Loan**"). Agency's obligation to pay to BFG any portion of an Installment Amount Due with respect to which the Agency has requested a Port Loan pursuant to the terms of this Section shall be contingent upon Port payment to the Agency of such Port Loan proceeds.

**5.4.5 Port Loan Repayment.** Port Loan amounts shall accrue interest annually at the Port's pooled interest rate adjusted quarterly from the date of payment to BFG of the relevant Installment Amount Due, until repaid. The Agency shall be obligated to repay the Port Loans in a maximum of ten (10) annual installments commencing January 15, 2010, through January 15, 2019. Agency's Port Loan repayment obligation in each year shall be an amount equal to the lesser of (a) the positive difference, if any, between (i) the Combined Campus Available Revenues for the preceding Fiscal Year, less Agency's Installment obligation to BFG with respect to such Fiscal Year, and Combined Campus Agency Base Revenues, and (b) twenty percent (20%) of the then-outstanding Port Loan balance. Notwithstanding the foregoing, in the event that during Fiscal Years 1999/2000 through 2009/2010 the Agency incurs an "Accrued Surplus Balance" (defined in Section 5.4.6, below), regardless of whether or not such Accrued Surplus Balance has been spent by the Agency, such amounts shall be deemed a credit balance "available" for use for timely payments of annual installments on the Port Loan on up to 20% of the then-outstanding Port Loan balance, until the "credit balance" is exhausted. Unless otherwise approved by the Port, Combined Campus Available Revenues shall be used to satisfy this Port Loan repayment obligation as a priority to all other uses or obligations, excluding, however, Agency obligations to pay debt service with respect to existing or refunded Bayfront/Town Centre I Project

Area tax allocation bonds and certificates of participation. Any partial payments of the Port Loan shall be credited first to accrued interest and then to principal. In the event that the Port Loan is not fully repaid in accordance with the terms of this Section with the last installment due on January 15, 2019 any remaining Port Loan balance shall be forgiven. At City/Agency's election, repaid amounts shall be contributed towards the H Street Extension capital improvement project or another joint Port and City/Agency project agreed to by the parties.

**5.4.6 Payments to BFG Starting in Fiscal Year 2010/2011 Limited to Actual Receipts.** If after subtracting any required Port Loan repayment required in accordance with Section 5.4.5, the remaining Combined Campus Available Revenues for any Fiscal Year commencing with Fiscal Year 2010/2011 and ending with Fiscal Year 2023/2024 do not equal or exceed Combined Campus Agency Base Revenues by an amount equal to or greater than the Installment Amount Due, an amount equal to the amount by which the Installment Amount Due exceeds the positive difference between the remaining Combined Campus Available Revenues for such Fiscal Year and the Combined Campus Agency Base Revenues ("**Deferred Obligation**") shall not be immediately due and payable, but shall be paid, plus interest at the rate of six and three-fourths percent (6.75%) per annum, out of first available future Combined Campus Available Revenues. Future Combined Campus Available Revenues shall be used to repay the Deferred Obligations in priority to all other uses or obligations, excluding, however, Agency obligations to pay debt service with respect to existing or refunded Bayfront/Town Centre I Project Area tax allocation bonds and certificates of participation, and Agency obligations to repay the Port Loan pursuant to Section 5.4.5, above. Any partial payments of Deferred Obligations shall be credited first to accrued interest and then to principal. In the event that any Deferred Obligations are not fully repaid pursuant to the terms of this Section with the last installment due and payable on January 15, 2025, any remaining Deferred Obligation amounts shall be forgiven. Notwithstanding the foregoing, no Installment amount otherwise due shall be deferred hereunder in the event that there are surplus Combined Campus Available Revenues, from previous Fiscal Years which were not required to be used by Agency for purposes of making previous Installment payments to BFG under Sections 5.4.2 and 5.4.3, above, or Port Loan payments under Section 5.4.5, above (collectively, "**Accrued Surplus Balance**"). Rather, regardless of whether or not such Accrued Surplus Balance has been spent by the Agency, such amounts shall be deemed a credit balance "available" for use for timely payments of Installments due to BFG, until the credit balance, if any, is exhausted.

**5.4.7 Adjustments and Maximum Payment.** If in any Fiscal Year from 2005/2006 through 2023/2024 with respect to which an Installment payment is due and payable, Agency Property Tax Revenues from the New Campus fall below an amount equal to Agency Property Tax Revenues in Fiscal Year 2004/2005 from the New Campus, then the Installment amount otherwise due and payable to BFG shall be reduced by an amount equal to the positive difference between Agency Property Tax Revenues in Fiscal Year 2004/2005 and the amount of Agency Property Tax Revenues received for such Fiscal Year. The parties agree that the maximum Installment Payment calculated under Section 5.4.3 shall not exceed an amount calculated based upon a maximum

taxable investment in industrial manufacturing facilities, and related offices and ancillary support facilities, and equipment newly developed, rehabilitated, or installed on the New Campus during the Relocation Period of \$55 million ("Maximum Taxable Investment"). The Agency's current estimate for the maximum Installment Amount based upon the Maximum Taxable Investment is \$459,700.

**5.4.8 In General.** For purposes of Sections 5.4.1 through 5.4.7, above, "property taxes" shall include fee ownership and possessory interest taxes assessed against real and personal property, but shall exclude any special taxes, special assessments or fees which might appear on BFG's property tax bill. Property tax information required for calculations hereunder shall be derived to the extent possible from the County Assessor Auditor, as appropriate. In the event that all of the tax information necessary for the determination of an Installment amount in any given Fiscal Year, or for any other determination required under this Section 5.4, is not available in time to allow for the timely calculation and payment of such Installment by the relevant Installment Payment Date, any payment due shall be made based on the then available information, subject to modification once all relevant tax information is obtained.

**5.4.9 Special Indemnity.** In consideration of Agency provision of financing assistance under this Section 5, BFG agrees to release, discharge, indemnify, defend and hold harmless Agency from all claims, liabilities, losses, costs and expenses (including without limitation Environmental Costs) arising out of Agency's provision of financial assistance under this Section 5. In consideration of the Port Loan pursuant to Section 5.4.4, BFG agrees to release, discharge, indemnify, defend and hold harmless Port from all claims, liabilities, losses, costs and expenses (including without limitation Environmental Costs) arising out of the Port Loan.

## **Section 6. NEW CAMPUS AND SOUTH CAMPUS DEVELOPMENT**

**6.1 Development Agreement.** The City/Agency and BFG shall negotiate and process for City Council/Agency Board consideration a development agreement (the "*Development Agreement*") governing use and development of the property comprising the New Campus as authorized by the Development Agreement Statute. The Development Agreement shall address such issues as land use rights and obligations, infrastructure matters, public financing, environmental issues, redevelopment and related matters, and, in keeping with the above objectives, shall contain in substantially similar form the provisions set forth below.

**6.1.1 Permitted Uses.** Provided that BFG is not in default under this Agreement or the Development Agreement (excepting minor or inconsequential matters not affecting the substance of these agreements), and subject to the terms and conditions set forth below, BFG shall have the vested right to implement all Permitted Uses and operations on the New Campus that are consistent with the Rules, Regulations and Official Policies existing as of the effective date (the "*Development Agreement Effective Date*") of the Development Agreement (the "*Existing Rules, Regulations and Official Policies*").

5-46

**6.1.2 Subsequent Approvals.** In connection with the Relocation and any New Campus development, BFG shall be obligated to obtain any and all permits required under the Existing Rules, Regulations and Official Policies. City/Agency shall use its best efforts promptly to process and implement all additional "**Project Approvals**" reasonably necessary to implement the BFG Relocation to the New Campus and to fulfill the goals, objectives, policies and plans shown and described in this Agreement and the Development Agreement ("**Subsequent Approvals**") consistent with Existing Rules, Regulations and Official Policies. City/Agency shall cooperate and diligently work to process to completion any Subsequent Approvals (including any and all initial studies and environmental assessments and analyses (if any) required under CEQA) which are required by law in connection with the BFG Relocation and implementation of the Permitted Uses on the New Campus. Such cooperation shall include, without limitation: a) Scheduling, convening and concluding all required public hearings; and b) Processing in an expeditious manner and in accordance with Existing Rules, Regulations and Official Policies all applications for Subsequent Approvals. The City/Agency shall retain its discretionary authority as to Subsequent Approvals, provided, however, such approvals shall be regulated by the Existing Rules, Regulations and Official Policies.

**6.1.3 Application of Subsequently Enacted Rules, Regulations and Official Policies.** Rules, Regulations and Official Policies enacted or modified after the Development Agreement Effective Date ("**New Rules**") shall be applicable to the New Campus only insofar as they do not conflict with the Existing Rules, Regulations and Official Policies, and only if their application will not materially modify, prevent or impede the Permitted Uses or impair any of the rights granted BFG under this Agreement or the Development Agreement. Any such New Rules that materially limit or restrict the rate or timing of development on the New Campus shall be presumed to conflict with the Existing Rules, Regulations and Official Policies. Provided, however, that this shall not preclude the application to the New Campus of such subsequently enacted New Rules as are (a) specifically mandated and required by changes in state or federal laws or regulations adopted after the Effective Date of the Development Agreement as provided in Government Code Section 65869.5; (b) specifically mandated and required by a court of competent jurisdiction; or (c) required as a result of facts, events or circumstances presently unknown or unforeseeable that would have a material adverse impact on the health or safety of the surrounding community.

**6.1.4 Other Governmental Permits, Approvals and Services.** BFG shall apply in a timely manner for such other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the implementation of any aspect of the Permitted Uses on, or provision of services to, the New Campus (including, without limitation, districts and special districts providing flood control, sewer, water and/or fire protection and agencies having jurisdiction over air quality, solid wastes, and hazardous wastes and materials). City/Agency shall cooperate with BFG in its efforts to obtain such permits and approvals and City/Agency shall use its best efforts to work with other governmental and quasi-governmental agencies so as to limit to the extent possible the imposition of additional conditions, fees, dedications or exactions by or through such agencies; provided, however, in no event shall City/Agency's obligations hereunder require City/Agency to incur out-of-pocket costs.

**6.1.5 Adjacent Land Uses.** City/Agency acknowledges that implementation and operation of the Permitted Uses on the New Campus will result in noise, light, vibration and other effects normally associated with industrial and manufacturing activities of the type carried out by BFG ("*Industrial Impacts*"). City/Agency shall consider such impacts when processing permits for the following operations (the "*Sensitive Receptors*") on property adjacent to the New Campus: residential projects, schools, hospitals, convalescent homes, hospices, retirement homes and daycare centers.

**6.1.6 Infrastructure, Fees and Exactions.** City/Agency shall use best efforts to minimize or eliminate any City/Agency imposed public fees, dedications, exactions or costs (including, without limitation, development fees, infrastructure fees, or processing fees) that could be incurred by BFG in connection with relocation of its operations or additional development of the New Campus in accordance with Existing Rules, Regulations and Official Policies or that would otherwise result from such relocation, consolidation, and the installation of relocation and consolidation-related New Campus improvements.

**6.1.7 Prior City Commitments.** City acknowledges and reaffirms all previous commitments related to reimbursements or credits due to BFG by City concerning the improvement costs previously incurred by BFG for the northern one-half of Lagoon Drive.

**6.1.8 Term.** The term of the Development Agreement shall expire twenty (20) years after the Development Agreement Effective Date.

**6.2 BFG Obligations.** In consideration of City/Agency agreements under this Agreement, BFG agrees as follows:

**6.2.1 Rados/Agency Parcels Use and Development.**

(a) **Temporary Use for Parking and Open Storage.** BFG shall not be prevented by the City/Agency from utilizing the Rados and Agency Parcels for parking and the Agency Parcel for open storage for a period of six (6) years after the Effective Date of this Agreement (the "*Interim Use Period*"). However, BFG shall be required to obtain all appropriate permits from the City/Agency in order to allow open storage and parking on the Agency Parcel and parking on the Rados Parcel, and City/Agency retains the right to impose reasonable conditions on such uses. During the Interim Use Period, BFG agrees to use its best efforts (a) to minimize and screen open storage of equipment and materials, and (b) not to use the perimeter of the New Campus for open storage. BFG agrees not to use the Rados Parcel for open storage at any time and acknowledges and agrees that such use shall not be permitted.

(b) **City Easement for Enhanced Landscaping and Entry Feature at Northeast Corner of Rados Parcel.** Prior to the Closing, City/Agency shall be granted an easement over a portion of the Rados Parcel as identified on Exhibit H attached hereto ("*Easement Area*"). The easement shall be for the installation and



maintenance of a Bayfront Redevelopment Project Area "entry statement" which may include enhanced landscaping, water features, statuary, monument signs and/or other quality architectural features ("**Entry Statement**"). City/Agency shall bear the construction and maintenance costs of the Entry Statement. Prior to City/Agency installation of an Entry Statement, BFG shall bear all costs related to improvements or maintenance of the Easement Area. In the event that a BFG Development Project or City/Agency proposal for an Entry Statement requires an adjustment to the Easement Area, the parties agree to meet and confer with the goal of developing a mutually agreeable adjustment that would reasonably accommodate each party's development needs.

(c) **Agency Option to Reacquire Rados.** In the event that by the end of the Interim Use Period, BFG has not committed to the development of the Rados Parcel into a permanent use that is integrated with an industrial and/or office development project on the New Campus, Agency shall have the option ("**Rados Option**") to reacquire the Rados Parcel on the terms and conditions set forth below:

(1) Purchase Price.

The Rados Option purchase price ("**Rados Option Purchase Price**") shall be the sum of (1) \$1,052,409, (the "**Original Purchase Price**"); (2) six percent (6%) of the Original Purchase Price multiplied by the number of years BFG owns the Rados Parcel prior to Agency exercise of the Rados Option; and (3) the County's then most recent appraised value of any improvements installed on the Rados Parcel.

(2) Option Term.

If the Rados Option is triggered (as provided above), the Rados Option ("**Rados Option Term**") shall commence upon the expiration of the Interim Use Period and shall expire on the date falling five (5) years thereafter. Notwithstanding the foregoing, the Rados Option shall terminate prior to the expiration of the Rados Option Term in the event that (i) BFG requests in writing that the Agency purchase the Rados Parcel for the Rados Purchase Price and the Agency fails to exercise the Rados Option pursuant to Section 6.2.1(d)(3) within sixty (60) days after such request; or (ii) during the Rados Option Term, Agency approves an Owner Participation Agreement for the development of the Rados Parcel.

(3) Option Exercise.

Agency shall exercise its option rights hereunder by notifying BFG in writing of its intent to do so ("**Option Notice**"). The parties shall then meet and confer to prepare all necessary conveyance documents on terms consistent with the terms hereof. The Rados

Parcel shall be transferred in its then "as-is" condition. Agency shall bear all standard escrow costs. The transfer shall occur within ninety (90) days after the date of the Option Notice. The Rados Option Purchase Price shall be paid in cash at close of escrow.

(4) Retention of Rights.

Notwithstanding the foregoing, BFG shall retain the right to convey the Rados Parcel to a third party at any time; provided, however, that the Rados Option to reacquire, unless previously terminated, shall run with the land and be binding upon such third party. In addition, City/Agency shall retain the right to reacquire the Rados Parcel at any time pursuant to its powers of eminent domain.

**6.2.2 No Challenges; Cooperation.** BFG shall not oppose, challenge or seek conditions or mitigation measures in connection with land use permits and other approvals necessary for development of projects proposed within the Bayfront Redevelopment Project Area consistent with, or less impactful than, the Existing Rules, Regulations and Official Policies applicable thereto. In addition, BFG shall reasonably cooperate with City/Agency in its processing, approval and implementation of adjacent developments to the extent necessary and reasonable to encourage land use, infrastructure and traffic compatibility. Notwithstanding the foregoing, BFG shall reserve the right to oppose, challenge or seek conditions or mitigation measures in connection with any project or activity that has a material, adverse impact on the uses or operations of the New Campus; provided, however, that this shall not include a right to challenge based upon market competition.

**6.2.3 New Campus Master Plan.** BFG agrees to submit to the City/Agency a master plan for the New Campus showing vertical improvements prior to processing permits for such improvements.

**6.3 Port Cooperation.** Although Port will not be a party to the Development Agreement, where such cooperation is reasonably necessary, Port agrees to cooperate in good faith (at no additional cost to the Port) with BFG and City during the Relocation Period to implement the provisions of the Development Agreement.

**6.3.1 Port Jurisdiction and Control Over Land Uses.** The Port shall use reasonable efforts to avoid approving or facilitating Sensitive Receptors on the South Campus.

**6.3.2 No Challenges.** Port acknowledges that, in order to continue the same Permitted Uses on the New Campus as it previously engaged in on the South Campus, BFG may be required to obtain certain land use permits and other approvals from City or other agencies. During the term of the Development Agreement specified in Section 6.1.8, Port shall not oppose, challenge or seek conditions or mitigation measures